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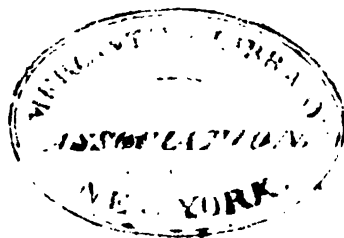
**SELECT SPEECHES**

**- OF -**

**JOHN SERGEANT.**



**SELECT SPEECHES**



**JOHN SERGEANT,**

**OF**

**PENNSYLVANIA.**

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**Philadelphia:**

**E. L. CAREY & A. HART—CHESNUT STREET.**

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**1832.**

Entered according to the act of Congress, the 12th day of October, 1832, by

**E. L. CAREY & A. HART,**

in the Clerk's office of the District Court of the Eastern District of Pennsylvania.



## PREFACE.

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THE publishers of this volume present it to the public, not merely as a testimonial of their sincere respect for a distinguished fellow citizen, but as an offering which they know will be most acceptable to the community at large. It is an exalted duty to rescue from the precarious tenure of ephemeral publications the reputation of an eminent man, and with this view they have been induced to cause a volume of the public speeches of Mr. Sergeant to be prepared, in order to give them the permanence they deserve to have, and of which, while scattered in detached pamphlets and periodicals, they could not be secure. The responsibility of the attempt is altogether with them. It was determined on, and has been made without consultation with Mr. Sergeant. The materials to which the publishers have had access, were scattered through congressional reports and newspapers, and it has been with some difficulty they have been collected. They are believed however to be in every respect accurate.

It was their hope to be able to publish a number of the forensic arguments of Mr. Sergeant, as well as his congressional speeches. In this, they have been, in great measure disappointed. The fame of an advocate is too often traditional, and while during his active career his influence

is most sensibly felt and readily acknowledged, as soon as the personal ascendancy is withdrawn, the charm lingers only in memory, and with the life of the last contemporary is forgotten. The physical labours of preparing forensic arguments for the press is altogether incompatible with the unceasing occupation of a professional man in active business, and until the science of reporting "speeches" shall extend to the judicial as well as the legislative halls, the advocate, in a vast majority of instances, must be satisfied with the proud distinction of a life of honour and usefulness, and be content, as soon as it terminates, to be forgotten. The history of the English bar strongly illustrates the truth of this assertion. Of all the master-pieces of eloquence that have been produced by the great English lawyers during the last century and an half, but one elaborate collection survives; and no one, especially if he be a lawyer, can peruse the volumes of Lord Erskine's Speeches without regret, deep regret, that a similar memorial of some of his predecessors, of Dunning, of Wedderburne, of Yorke, of Pratt and of Murray, has not been rescued from the grasp of oblivion. It was a remark of Mr. Pitt, that were he allowed to redeem from forgetfulness any one of those works of genius of which in ancient or modern times the same only has survived, he would select a single speech of Lord Bolingbroke, accurately and faithfully reported, in preference to all the rest. A lawyer might, in the same spirit prefer an argument fresh from the lips, or corrected by the pen of Lord Mansfield, to any of the obliterated records of departed genius.

To the American bar, the same remark will as justly apply. A recent publication has, in a single instance,

supplied the deficiency, and in a measure done justice to one distinguished lawyer of our country; but with this exception, and a few reports of cases selected on account of some special public interest, the same of the American lawyer has had no substantial memorial. Detached arguments of Mr. Sergeant, might have been obtained from the volumes of the Federal and State Reports, but on examination they were found to be mere sketches, as noted by the reporter, and without the least revision. The only forensic argument inserted in this volume, is the one delivered by Mr. Sergeant before the Supreme Court of the United States in the case of the Cherokee nation, and those who heard him on that occasion, or who have ever heard him when arguing with his peculiar eloquence a cause in which his feelings were deeply interested, need not be told how inadequate the report is to his merits, nor how strongly it illustrates what has been said of the transitory nature of an advocate's fame. It has been inserted, however, as the only one which has had even a partial revision. Abridged as it is, and divested of all the ornaments of rhetoric, it will be read and admired as a fine specimen of argumentative eloquence, having for its object to enforce by reason the results of honest and deliberate reflection. It is to be regretted that one other argument of Mr. Sergeant, (we refer to the one delivered in the Circuit Court of the United States, at Philadelphia, in the Nicholson land case,) should not be given to the public in an elaborate form. It was an effort worthy of the orator and the occasion. He was there in the proud attitude of the representative of a great Commonwealth of whose reputation he was jealous, and whose legislation he was called on to

vindicate. He was placed too in the position of an advocate required to enforce personal rights, and to protect private interests, which had been created and had flourished under the legislation which was assailed. Questions were involved that were matters of appropriate consideration for a statesman, and points of judicial casuistry, on which the professional logician might employ all his subtlety. There were disputed points of municipal regulation, and grave questions of constitutional law. They were all met; and in an argument which occupied three days in delivery, Mr. Sergeant satisfied the expectation of all, who either as friends or clients, watched the progress of the cause, and added one more to the many triumphs of a long, and honourable professional career. This is not an inappropriate place to express the hope that this argument may one day be given to the public in a complete form. It has been referred to here, not merely on account of its peculiar merit, but as being distinctly within the recollection of the profession and the public.

Nothing would be more unjust than to estimate the professional fame or public services of Mr. Sergeant, by the select speeches contained in this volume. The varied occupations of his profession, of a practice that for a long series of years has been most extensive and laborious, must be taken into view, and with them, a constant and active participation in almost every scheme of public enterprise and beneficence that has been designed within the sphere of his influence. His life has been one of constant and unremitting labour, in the course of which the least of his cares seems to have been the acquisition of mere reputation—the greatest, the conscientious performance of duty,

and the honest discharge of the obligation which binds every man to the community. Those who have watched with solicitude the career of a public man thus regardless of personal elevation, and insensible to merely selfish impulses, will understand the mingled feelings of regret and veneration which this disinterested and self-disparaging conduct inspires. The reputation of a great man, earned by a life of usefulness, is, however, the property of the nation, and from the press, as the natural guardian of that part of the nation's property, much will be expected and required.

This is neither the place nor the occasion, for an elaborate tribute to Mr. Sergeant's character and services. It is as a public man especially that he is now looked to by the community with deep and increasing interest, and it is with a view to do justice to him in this respect, that this volume has been prepared. It is as little suited to the occasion; and to the ability of the publishers, to attempt to characterise his eloquence, as it has been developed in the legislature of the union. The same masculine intelligence and comprehensive grasp of mind, which originally gained for him professional distinction, enabled him at once on his entrance on a new sphere of action, to reach a high and proud eminence, which, in the course of a public life chequered by alternate triumphs and reverses, he has never abandoned, and which he will occupy so long as rich intellectual endowment, and consistent patriotism can be appreciated.

The American bar has always had, and always deserved, an exalted character; and it is to the public services of such men as John Sergeant and his illustrious predecessors

and contemporaries, mingling from necessity as well as inclination, political with professional pursuits, that this reputation is to be attributed. The bar has supplied the most efficient defenders of our free institutions, and should the hour ever arrive when civil liberty, as we enjoy it, shall be threatened or endangered, it is to the American lawyer, conversant by habitual reflection with the eternal principles of liberty as applied to the rights of social man, that the patriot must look for effectual aid, and by his hand can alone be applied what Sir Edward Coke has called "the golden metwand" by which the right of the citizen is measured, and the authority of the government maintained. The active energies of humanity can never sink into "the easy trance of servitude," while the beacons of the law burn brightly, and the restless eye of juridical vigilance is unclouded.

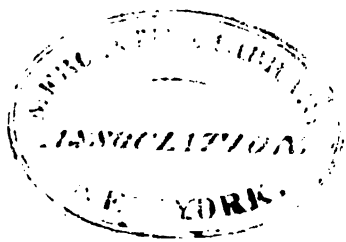
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## ORATION,

DELIVERED IN THE CITY OF PHILADELPHIA, ON THE  
TWENTY-FOURTH OF JULY, 1826, IN COMMEMORATION  
OF THOMAS JEFFERSON AND JOHN ADAMS.

FRIENDS AND FELLOW CITIZENS,

Time, in its course, has produced a striking epoch in the history of our favoured country; and, as if to mark with peculiar emphasis this interesting stage of our national existence, it comes to us accompanied with incidents calculated to make a powerful and lasting impression. The dawn of the fiftieth anniversary of independence beamed upon two venerable and illustrious citizens, to whom, under Providence, a nation acknowledged itself greatly indebted for the event which the day was set apart to commemorate. The one was the author, the other "the ablest advocate," of that solemn assertion of right, that heroic defiance of unjust power, which, in the midst of difficulty and danger, proclaimed the determination to assume a separate and equal station among the powers of the earth, and declared to the world the causes which impelled to this decision. Both had stood by their country, with unabated ardour and unwavering fortitude, through every vicissitude of her fortune, until "the glorious day" of her final triumph crowned their labours and their sacrifices with complete success. With equal solicitude, and with equal warmth of patriotic affection, they devoted their great faculties, which had been employed in vindicating the rights of their country, to construct for her, upon deep and strong foundations, the solid edifice of social order and of civil and religious freedom. They had both held the highest public employ-

ments, and were distinguished by the highest honours the nation could confer. Arrived at an age when nature seems to demand repose, each had retired to the spot from which the public exigencies had first called him—his public labours ended, his work accomplished, his beloved country prosperous and happy—there to indulge in the blessed retrospect of a well-spent life, and await that period which comes to all. But not to await it in idleness or indifference. The same spirit of active benevolence, which made the meridian of their lives resplendent with glory, continued to shed its lustre upon their evening path. Still intent upon doing good, still devoted to the great cause of human happiness and improvement, neither of these illustrious men relaxed in his exertions. They seemed only to concentrate their energy, as age and increasing infirmity contracted the circle of action, bestowing, without ostentation, their latest efforts upon the state and neighbourhood in which they resided. There, with patriarchal simplicity, they lived, the objects of a nation's grateful remembrance and affection; the living records of a nation's history; the charm of an age which they delighted, adorned and instructed by their vivid sketches of times that are past; and, as it were, the embodied spirit of the revolution itself, in all its purity and force, diffusing its wholesome influence through the generations that have succeeded, rebuking every sinister design, and invigorating every manly and virtuous resolution.

The Jubilee came. The great national commemoration of a nation's birth. The fiftieth year of deliverance from foreign rule, wrought out by the exertions and sufferings and sacrifices of the patriots of the revolution. It found these illustrious and venerable men, full of honours and full of years, animated with the proud recollection of the times in which they had borne so distinguished a part, and cheered by the benificent and expanding influence of their patriotic labours. The eyes of a nation were turned to-

wards them with affection and reverence. They heard the first song of triumph on that memorable day. As the voice of millions of freemen rose in sounds of gratitude and joy, they both sunk gently to rest, and their spirits departed in the midst of the swelling chorus of national enthusiasm.

Death has thus placed his seal upon the lives of these two eminent men with impressive solemnity. A gracious Providence, whose favours have been so often manifested in mercy to our country, has been pleased to allow them an unusual length of life, and an uncommon continuance of their extraordinary faculties. They have been, as it were, united in death, and they have both, in a most signal manner, been associated with the great event which they so largely contributed to produce. Henceforward the names of Jefferson and Adams can never be separated from the Declaration of Independence. Whilst that venerated instrument shall continue to exist, as long as its sacred spirit shall dwell with the people of this nation, or the free institutions that have grown out of it be preserved and respected, so long will our children, and our children's children to the latest generation, bless the names of these our illustrious benefactors, and cherish their memory with reverential respect. The jubilee, at each return, will bring back, with renovated force, the lives and the deaths of these distinguished men; and history, with the simple pencil of truth, sketching the wonderful coincidence, will, for once at least, set at defiance all the powers of poetry and romance.

The dispensation which has thus connected itself with the first jubilee of our independence, mingling with our festivities the parting benediction, and the final farewell of our two illustrious countrymen, cannot fail to bring with it the most serious reflections. Marked, as it is, by such an extraordinary coincidence, methinks it seems to announce, with solemn emphasis, that henceforward the care of their great work is committed to our hands; that we are to guard,

to protect, and to preserve the principles and the institutions which they, at such an expense, have established for our benefit, and for that of our posterity; and, may I not add, for the common benefit of mankind. Of the signers of the Declaration of Independence, but one now remains. Health and peace to the evening of his days! The single representative on earth of the Congress of 1776, he seems to stand between two generations, and to be the visible link that still connects the living with the mighty dead. Of all, indeed, who had a part in the achievement of independence, "whose counsels aided, or whose arms defended," few and feeble are they who survive. Day by day their numbers are reduced; yet a little while, and they will have followed their illustrious compatriots. Not a footstep will be heard throughout this land, of all who rushed to danger in their country's cause,—not an eye will beam, that borrowed prophetic light from afar to illumine the hour of darkness,—not a heart will beat, whose pulsation was quickened by the animating hope of a glorious triumph.

To this effect we are admonished by the event we are met to commemorate. Here then let us pause! The point of time at which we have arrived, marked by a concurrence of circumstances so impressive, demands our earnest attention. It stands forth, I repeat, with commanding dignity, and seems to say, Behold! fifty years have gone by. The altar of freedom raised by your fathers—the sacred fire they lighted upon it—are now, at the appointed time, delivered to you. To you belongs the great trust of their preservation, until another generation shall in turn succeed to occupy your places, from you to receive the invaluable deposit, and with it to receive its guardian spirit, the spirit of the revolution. Shall we, my friends and fellow citizens, be able to acquit ourselves of this high trust? Shall the next jubilee find the altar pure and undefiled, the fire still burning with a steady flame? And shall every succeeding jubilee, like that which has passed, be at once an evidence

and an acknowledgment of the continuing efficacy of the great truths promulgated in the Declaration of Independence? These are indeed affecting questions.

To commemorate the event which has here brought us together, and at the same time to invigorate our virtuous resolutions, let us, for a moment, look back upon the lives of our two illustrious fellow citizens, who walked hand in hand through the struggle of the revolution, and hand in hand have descended to the tomb, as if, with one voice, to deliver their parting blessing to their beloved country.

Mine is not the task of the biographer or the historian. I am not to enter into a detail of their lives, nor to attempt to spread before you a history of the great events in which they acted. These are for abler hands, for ampler opportunity, and more extended labour. Nor is it at all consistent with the duty I owe to the occasion, or to you, if it were in accordance with my own inclination, or within the scope of my humble capacity, to disturb the harmony of feeling that prevails, by attempting a comparative estimate of their uncommon merits. It is not my office, nor is it your desire, to weigh them against each other—to bring them into conflict, when death has sealed for ever the friendship which, in their latter years, they so delighted to cherish. A rapid, and it necessarily must be a hasty and imperfect sketch of some of the principal points in their public career, will be sufficient to show how strong is the claim of both to our warmest admiration, and to our most affectionate gratitude. Extend to me your indulgence, of which I stand so much in need, while, in obedience to your commands, I endeavour, however feebly, to present such a sketch.

The attempt of Great Britain to visit these colonies with an exercise of power inconsistent with their just rights, found our two eminent fellow citizens, each in his native state. Mr. Jefferson, a young man, already a distinguished member of a legislature, which has never been without the distinction of patriotism and talents. Mr. Adams, a few

years older, successfully engaged in the practice of the law, with established reputation and extensive influence. They were among the first to discern the character of this arrogant attempt; to rouse their countrymen to a sense of the danger of submission; to animate them to the assertion of their rights; and to embark, fearlessly, in resistance to the first approaches of arbitrary power. They did not hesitate. They never paused to count the cost of personal sacrifice, but, with a resolution as determined as it was virtuous, placed at once their lives, their fortunes, and all their hopes upon the issue of their country's cause.

When these colonies, for mutual support and counsel, resolved to convene a general Congress, Mr. Adams was appointed one of the deputies from Massachusetts. He took his seat on the 5th of September, 1774, the memorable day of the first meeting of that august assembly, whose acts then were, and since have been the theme of universal admiration. Indeed it may be truly averred, that as long as wisdom, constancy, unconquerable resolution,—as long as patriotism, and contempt of every danger, but that which threatens one's country—as long, to sum it all up at once, as generous and disinterested devotion, guided by talents of the highest order, shall be esteemed among men, so long will the old Congress continue to retain the first place among human assemblies, and spread its lustre over the age in which it acted.

In this same body, Mr. Jefferson took his seat on the 21st June, 1775, elected a deputy from Virginia, in the place of Peyton Randolph. Of the estimation in which Mr. Jefferson was held, in that more than Roman Senate, though still a young man, probably the youngest in Congress, sufficient evidence will presently appear. But in the mean time let me mention to you a fact which preceded, a few days, the coming in of Mr. Jefferson, and deserves to be remembered with gratitude to his illustrious associate. It was John Adams, who, on the 15th June, 1775, nominated George

Washington, "to command all the continental forces raised, and to be raised, for the defence of American liberty." It was upon that nomination the father of his country was unanimously elected. How many reflections are here excited! But we must not now indulge in them.

This interesting circumstance does not appear on the printed Journals of Congress. It would seem to have been the practice not to give the names of those who made either nominations or motions. But it is stated upon the most respectable authority, whence also are derived some particulars which it may not be uninteresting to mention. The person who had been previously thought of for this high station, was General Ward of Massachusetts. As he was of the same colony with Mr. Adams, it must have been a sacrifice of feeling thus to pass him by. He generously and readily made it to advance the great, good cause. A striking example of disinterestedness!—Washington, not aware of the intention of Mr. Adams, was in his seat in Congress at the time of the nomination. The instant it was made, he rose and left the hall. A beautiful instance of unaffected modesty!

But we must not dwell too long on these particulars, however delightful and refreshing. The march of events was rapidly disclosing the important truth, that submission, unconditional submission, or victory, were the only alternatives. Already had blood been shed at Lexington, at Concord, and at Bunker's hill. Already had the freemen of America, as if guided by a common impulse, met the veteran troops of Great Britain in the field, and encountered them with a determined courage which nothing but a deep conviction of their rights could have inspired. Already too, as we have seen, had the Congress appointed the immortal Washington to command the troops raised, or to be raised, for the defence of American liberty. Already had they declared with the utmost solemnity, "We have counted the cost of this contest, and find nothing so dreadful as volunta-

ry slavery." Our cause was armed with the triple armour of justice; but as yet it wanted, perhaps, a more definite purpose, a visible standard and a character that should give us a station among the nations of the earth.

On the 7th June, 1776, resolutions were moved respecting independence.\* On the 10th June, a committee of the whole reported a resolution; "That these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown; and that all connection between them and the state of Great Britain is, and ought to be, totally dissolved." On the same day the consideration of this resolution was postponed to Monday, the first of July; and it was resolved, "that in the mean while, that no time be lost, in case the Congress agree thereto, a committee be appointed to prepare a declaration to the effect of this resolution." On the following day a committee was appointed, of which Mr. Jefferson was the first named, and Mr. Adams the second. The remainder of the committee were Dr. Franklin, Mr. Sherman, and R. R. Livingston. The duty of preparing the draught was by them committed to Mr. Jefferson and Mr. Adams. Thus were they associated in that immortal labour. On the 2d July, the resolution of independence was adopted, and on the ever memorable 4th July, 1776, the declaration reported by the committee, with some slight alterations, was agreed to and promulgated. It is now a nation's creed.

There is a point of resemblance, in the lives and characters of these illustrious men, which must not be overlooked in its bearing upon the present subject. To the natural gift of great talents, they had both added the advantages of constant laborious culture. They came forward, disciplined and prepared by previous study, for the service and

\* The motion was made by Richard Henry Lee, in pursuance of instructions from the Convention of Virginia, and is understood to have been in the terms reported by the committee of the whole.



the ornament of their country. The deep and extensive learning of Mr. Adams is familiar to all, and none of us are ignorant of the varied and uncommon acquirements of Mr. Jefferson. The late venerable Charles Thompson, a chronicler of the times of the revolution, has told me, that he well remembered the first appearance of Mr. Jefferson in Congress; that he brought with him the reputation of great attainments, particularly in political science, which he always well sustained. They had both diligently studied the history of man and of government. The examples of generous devotion in ancient times, inspired their hearts with lofty patriotism. The records of ages since, showed them how accident, and fraud, and force, had sunk the great body of mankind under grinding oppression, justified at length by maxims essentially false, but which the solitary speculations of writers, however undeniably true, were unable to correct. Here then, with prophetic wisdom they perceived, and blessed be God who put it into their hearts to perceive—here they perceived was the great occasion which the patriot and philanthropist had rather wished than hoped for, at once to fix the end and aim of the revolution by raising the standard of the rights of man.

It was no longer a mere contest for separation. National independence was indissolubly connected with civil and religious liberty. The same venerated instrument that declared our separation from Great Britain, contained also the memorable assertion, that "all men are created equal, that they are endowed by their Creator with certain unalienable rights, and that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed." This was the text of the revolution—the ruling vital principle—the hope that animated the patriot's heart, and nerved the patriot's arm, when he looked forward through succeeding generations, and saw stamped upon all their institutions, the great principles set forth in the Declaration of Independence. It is

not a charter—we hold by no charter. Freedom is cœval with our national existence, derived to us from no man's grant or concession, but received from the Author of our being, and secured by the valour, and toil, and blood of our ancestors.

These sacred principles, thus solemnly inscribed upon the banner of the revolution, are still borne aloft by the strength of increasing millions. They have not been defaced nor obliterated, nor even their lustre dimmed, by lapse of time or change of circumstances. When the war of the revolution was ended, and the god of battles had crowned our country's cause with victory, the gallant soldier who had endured every privation, and exposed himself to every hazard in the field, laid down his arms in submission to their acknowledged authority. An armed nation which had conquered peace in a seven years war, was changed in an instant into a nation of citizens; and the men who had fought and bled in the cause of their country, were seen in the walks of private life, confessing by their conduct, their voluntary allegiance to the truths which had been proclaimed on the great day of independence.

When, from the experience of a few years, the inefficacy of the articles of confederation had been demonstrated, these sacred principles were solemnly reiterated in the introduction of the Constitution of the United States. They are the basis of every state constitution: and, like the air that we breathe, they belong to our very existence. He would be justly deemed an apostate, and a traitor, who should seek to destroy or weaken them. He would be held up to opprobrium and scorn, as the enemy of his country, and the enemy of mankind.

Nor has their kindly influence been confined to our own country. Throughout the world, the friends and advocates of human freedom and of human rights, have found consolation and encouragement in the example thus set before them. The standard was raised for ourselves—but it was

raised on high, and it has floated in triumph, visible to the nations of the civilized world, for their assurance that man is competent to self government. Long established error has been rebuked by their practical excellence. Systems apparently consolidated by ages, have been modified by their influence. A knowledge of the rights of man has been universally disseminated. Whenever and wherever, by any crisis in affairs, the people for a moment recover a portion of their lost power, their eager demand is for the acknowledgment of first principles in written constitutions. Whenever a sovereign, alarmed by foreign menace or pressure, would rouse his people to uncommon exertion, he appeals, not to the obsolete errors which he loves too well to renounce whilst their preservation is possible; but, in such an exigency, he is obliged to speak to their own sense of their own rights, and to promise to secure them by written constitutions. This we have witnessed in our day. Monarchs and their subjects have marched forth together under this assurance, animated with unwonted energy. The last, the greatest, the most powerful incentive to vigorous exertion, has been found in that knowledge which the principles of the Declaration of Independence have diffused so extensively. Such promises, it is true, have often proved delusive. "Ease would retract vows made in pain." But the knowledge exists—the feeling is there—it cannot again be smothered or subdued. It will go on, conquering and to conquer. At this moment, such has been its mighty progress, that no man will dare to assert, even though a princely diadem surround his brow, what, fifty years ago it would have been thought impious to dispute. That "governments are instituted for the benefit of the people," is already established—"that they derive their just powers from the consent of the governed," cannot fail soon to follow, to the utter extirpation of the absurd heresy of the divine right of kings. In this hemisphere, a "fraternity of freedom" has been founded. The colonies of Spain, afflict-

ed by ages of oppression, have looked upon the standard of our revolution, and been healed. They have achieved their independence; and have taken their station among the powers of the earth, as members of a family of free republics. Such has already been the spread of the light which issued from yonder hall, on the fourth July, 1776.

In contemplating the part which these illustrious men performed in the great work of that day, it is delightful to recur to the generous and conclusive testimony they have borne to each other's merits. Of Mr. Jefferson, Mr. Adams says "he came into Congress in June, 1775, and brought with him a reputation for literature, science, and a happy talent for composition. Writings of his were handed about, remarkable for their peculiar felicity of expression. Though a silent member in Congress, he was so prompt, frank, explicit, and decisive on committees, (not even Samuel Adams was more so,) that he seized upon my heart." Of Mr. Adams, Mr. Jefferson says, in a letter, written in 1813, to an artist, who was about to engrave the picture of the Declaration of Independence, "No man better merited, than Mr. John Adams, a most conspicuous place in the design. He was the pillar of its support on the floor of Congress—its ablest advocate and defender against the multifarious attacks it encountered." Assaults it did encounter—resistance it did suffer—not from the enemies only of our country, but from her most sincere friends. The timid were alarmed; the minds of men of ordinary constancy were possessed with doubts and hesitation, at this final and irretrievable step. Heroic courage and patriotism were what the occasion demanded, and what—let us be thankful for it!—the occasion found. We have seen that the resolution engaged the attention of Congress, from the 7th June, when it was moved, to the 2d July, when it was adopted. "The arguments in Congress," says the late venerable Governor M'Kean, a man of revolutionary stature and strength, himself one of the signers of the declaration, "The

arguments, for and against the Declaration of Independence, were exhausted, and the measure fully considered." And so they, doubtless, were, with all the deliberate gravity and solemn earnestness which the momentous occasion required. It was, indeed, a fearful question. At the last moment, when the question was about to be put, a celebrated member of the Congress, of undoubted patriotism, a man whose memory is still cherished with grateful affection for his contributions to the service and the honour of his country, rose and spoke against it. "He stated the consequences in alarming colours." Silence and doubt ensued. John Adams, "the pillar of its support," as Mr. Jefferson has styled him, rose in reply. His fervid eloquence silenced every doubt. The question was settled, and the vote of the states was unanimous. In what language he made this last and powerful appeal, we may judge from the triumphant burst of patriotic exultation and pious emotion with which he wrote to a friend on the following day.\* "Yesterday the greatest question was decided that was ever debated in America; and greater, perhaps, never was or will be decided among men. A resolution was passed, without one dissenting colony, 'that these United States are, and of right ought to be, free and independent states.' The day is passed. The 4th July, 1776, will be a memorable epocha in the history of America. I am apt to believe it will be celebrated, by succeeding generations, as the great anniversary festival. It ought to be commemorated as the day of deliverance, by solemn acts of devotion to Almighty God. It ought to be solemnized with pomp, shows,

\* There can be no doubt that the date of the letter was the 3d July, 1776, though, in recent publications, it has appeared with the date of the 5th. The resolution of Independence was adopted on the 2d July—the declaration was not agreed to till the 4th. The former is the "resolution" referred to by Mr. Adams. Inattention to this distinction has probably led to the change of date in the printed copies. The error is pointed out, and corrected in a very satisfactory manner, in the Democratic Press of the 12th instant.

games, sports, guns, bells, bonfires, and illuminations, from one end of the continent to the other, from this time forward for ever. You will think me transported with enthusiasm, but I am not. I am well aware of the toil, and blood, and treasure, that it will cost to maintain this declaration, and support and defend these states; yet, through all the gloom I can see the rays of light and glory. I can see that the end is worth more than all the means; and that posterity will triumph, although you and I may rue, which I hope we shall not."

The authorship of the splendid record we have been considering belongs to Mr. Jefferson. To him is justly due the merit of preparing a paper, which has elevated the national character, and furnished a perpetual source of instruction and delight. That Mr. Adams, his colleague, entered deeply into his sentiments, is equally certain. To the last he retained his attachment to the original draught prepared by Mr. Jefferson, and thought it had not been improved by the slight alteration it underwent, in expunging a few passages or parts of passages.

Placed by their talents and virtues in this elevated and commanding position, these two distinguished champions of the rights of their country and the rights of mankind, were thence-forward looked to for every arduous service. In December, 1777, Mr. Adams was appointed a commissioner to France, an appointment, as all who are acquainted with our history well know, of great hazard, but of the highest importance. Struggling for existence, with comparatively feeble means, against a powerful enemy, who assumed the tone of an insolent and vindictive master, but struggling with a constancy of resolution, which already conciliated the regard of nations, our country looked abroad for countenance and aid. But the fleets of England covered the ocean, and the tower, where Laurens was so long confined, with no prospect beyond it but the scaffold, was the almost certain reward of the daring rebel (for so they would have

styled him) who should fall into their power. This hazardous employment he instantly and fearlessly accepted. He embarked soon after, and, through many imminent perils, arrived in safety. Of the signal advantages derived from that commission you are well aware. A treaty was made with France, and, in the year 1778, our great countryman Franklin was received by that nation as the acknowledged minister of a sovereign and independent power.\*

Mr. Adams was afterwards sent to Holland, where he successfully negotiated a loan.

Whilst Mr. Adams was serving his country abroad, Mr. Jefferson was rendering equal service at home. Being elected governor of Virginia, he gave the most effectual aid to the cause of the revolution. This rests upon no doubtful or questionable authority. Twice, in the course of the year 1780, were resolutions adopted by Congress, approving his conduct, in aiding their military measures in the south. In the same year Congress instructed a committee "to inform Mr. Adams of the satisfaction they received from his industrious attention to the interests and honour of these United States abroad." Thus did they both deserve, and thus did they both receive, the highest rewards that could be bestowed upon them.

Not to fatigue you by too much detail, let me simply mention, that Mr. Adams was appointed sole commissioner to negotiate peace with Great Britain in 1779,—that he was one of those who negotiated the provisional articles of peace with Great Britain in November, 1782,—who made the armistice for the cessation of hostilities in January, 1783,—

\* The treaty was signed at Paris, the 6th February, 1778, by B. Franklin, Silas Deane, and Arthur Lee. The Congress of the United States, desired the suppression of the 11th article, consenting in return that the 12th should likewise be considered of no effect. The acts rescinding these two articles were signed at Paris, the 1st September, 1778, on the part of the United States, by B. Franklin, Arthur Lee, and John Adams. Doctor Franklin was appointed Minister Plenipotentiary to France, on the 14th September, 1778.

and who finally negotiated the definite treaty of peace in September, 1783.

The thirteen United States, sovereign and independent by their own exertions and the favour of Providence, from the fourth July, 1776, were now universally acknowledged as such, and admitted by all to their place in the family of nations. They chose, for their two principal representatives abroad, the illustrious men whose death we are here met to commemorate. Mr. Jefferson succeeded Dr. Franklin in France; Mr. Adams was sent to England. They were joined also with Dr. Franklin, in a plenipotentiary commission to negotiate treaties of amity, commerce, and navigation, with the principal powers of Europe.

The first treaty with Prussia, the only fruit at that time of the commission, bears the names of Franklin, of Jefferson, and of Adams. What a splendid constellation of talent! Sufficient, of itself, to shed unfading lustre on a nation—more than sufficient to refute the exploded European doctrine of the degeneracy of man in America.

Our history from this period is familiar to you all. When the present constitution was framed, Mr. Jefferson was still in France. Ever alive to the welfare of his beloved country; ever watchful of those sacred principles of human right, which it had been the labour of his life to vindicate and maintain, he looked with intense anxiety upon this interesting movement. To his suggestion, it is understood, we are indebted for the ten original amendments to the constitution, embodying such restrictions on the authority of Congress, and such assertions of the fundamental rights of the citizen, as were thought necessary to the preservation of the just power of the states, and the security of civil and religious freedom.

Upon the organization of our present government, the voice of the nation assigned the highest place to Washington. He was elected President of the United States. The illustrious men whom we now commemorate, were second



only to him who had no equal. The one was elevated by the choice of the people; the other by the choice of Washington.

Mr. Adams was elected Vice-President of the United States; or rather, let me say, he was the second choice for President. As the constitution then stood, two were voted for as President, and he who had the smallest number of votes was the Vice-President.

Mr. Jefferson was called home by the father of his country, to fill the high and arduous station of Secretary of State. With what ability he performed its duties, at a period of more than ordinary difficulty, I need not state; for it is still fresh in the recollection of most of those who hear me.

A second time was Mr. Adams elected to the second office in the country, Washington still filling the first. Before a third election came, the great father of his country announced his determination to retire, bequeathing to his countrymen, in a farewell address, his solemn injunctions and advice, which ought for ever to remain engraven upon their hearts. He thus set the example, now ripened into an established limitation, that the highest office in the government is not to continue in the same hands for a longer period than two constitutional terms.

In this great trust, in dignity and importance the greatest in the world—the first magistrate of a nation of freemen, the first citizen of a republic, selected from millions by their spontaneous choice—in this great trust, Mr. Adams succeeded Washington; Mr. Jefferson having the almost equal honour of being his chosen competitor. Mr. Jefferson was elected Vice-President.

At the expiration of four years they were again competitors. After a contest, still remembered for the eagerness and warmth, I will not say the violence of the parties which then divided the United States, Mr. Jefferson was elected President. Mr. Adams retired from public life.

Mr. Jefferson was a second time chosen to the same high office. As the expiration of this term drew nigh, imitating the dignified example of Washington, and, if possible, strengthening its influence by his deliberate opinion, Mr. Jefferson announced his intention to retire. He retired in March, 1809.

Thus terminated the public employment of these eminent men. Thus did they take leave, as it were, of that country, whose welfare had so long engrossed their attention and engaged their anxious labours. Is there a man who would desire now to revive the recollection of the angry feelings, and the warm contention, which prevailed among their fellow citizens during a portion of the latter period of their service? Is there a man among us, who, upon this occasion, consecrated to the indulgence of virtuous emotion, would consent to disturb the harmony that breathes in the common acknowledgment to the illustrious dead? To obscure the glorious light of the revolution, by seeking to render permanent every cloud that is raised in the gusts of momentary excitement? Let the truth be told. It is replete with salutary counsel, and it exalts the character of the departed sages. Be it, that they appeared to be rivals. Be it, that they were, for a time, separated and placed in opposition, the leaders of the two great parties in the nation. Did they, therefore, love their country less? Were they less influenced by the sacred ardour, that animated their hearts in the darkest hour of the revolutionary contest? Were they not patriots still, the same lofty and incorruptible patriots, who, on the 4th July, 1776, had pledged "their lives, their fortunes, and their sacred honour?" Did either of them admit a thought, or would either of them, for all the honours the world could bestow, have countenanced a design unfriendly to his country's interests? Let them answer for themselves, or rather let each answer for the other. The healing influence of time soon allayed the little irritation which conflict had produced. They

looked upon their country, and they saw that she was prosperous and happy. They saw, perhaps, that even the contests of party, angry as they seemed at times to be, yet governed by the spirit of patriotism, were over-ruled for her permanent advantage; that eager discussion had elicited truth, and the solid good sense of a reflecting people had seized and secured whatever was valuable and worthy to be preserved. Both had triumphed in the triumph of their country's welfare. The aged patriots felt that they still were brothers. Their ancient friendship revived. Nothing remained but the remembrance of the scenes in which they had acted so mighty a part. Nothing was heard from either but heartfelt acknowledgements of the other's worth and services. If it had been in the order of Providence to permit one of these illustrious citizens to witness the departure of his associate, the survivor would have been the first whose honoured voice would have been heard to pronounce the eulogy of the departed patriot.

To form an estimate of the merits and services of these distinguished men, far more would be necessary than has been now attempted, or the occasion will allow. I have only selected for reflection some of the principal incidents of their public lives. But let me remind you, that they are characteristic incidents. If you follow them into their respective states, if you follow them into their retirement, whatever may be their employments or pursuits, they are all stamped with the same ardent love of country, the same unaffected reverence for the rights of mankind, the same invincible attachment to the cause of civil and religious freedom.

Great are their names! Honoured and revered be their memory! Associated with Washington and Franklin, their glory is a precious possession, enriching our annals, and exalting the character of our country.

Greater is the bright example they have left us! More precious the lesson furnished by their lives for our instruc-

tion! At this affecting moment, then, when we are assembled to pay the last tribute of respect, let us seriously meditate upon our duties, let us consider, earnestly and anxiously consider, how we shall best preserve those signal blessings which have been transmitted to us—how we shall transmit them unimpaired to our posterity. This is the honour which would have been most acceptable to these illustrious men. This is an appropriate mode of commemorating the event we this day mourn. Let the truths of the Declaration of Independence, the principles of the revolution, the principles of free government, sink deep into our hearts, and govern all our conduct.

National independence has been achieved, once and for ever. It can never be endangered. Time has accumulated strength with a rapidity unexampled. The thirteen colonies, almost without an union, few in numbers, feeble in means, are become in a lapse of fifty years, a nation of twenty-four states, bound together by a common government of their own choice, with a territory doubled by peaceful acquisition, with ten millions of free inhabitants, with a commerce extending to every quarter of the world, and resources equal to every emergency of war or peace. Institutions of humanity, of science, and of literature, have been established throughout the land. Temples have risen to Him who created all things, and by whom all things are sustained, not by the commands of princes or rulers, nor by legal coercion, but from the spontaneous offerings of the human heart. Conscience is absolutely free in the broadest and most unqualified sense. Industry is free; and human action knows no greater control, than is indispensable to the preservation of rational liberty.

What is *our* duty? To understand, and to appreciate the value of these signal blessings, and with all our might and strength, to endeavour to perpetuate them. To take care that the great sources from which they flow, be not obstructed by selfish passion, nor polluted by lawless ambi-

tion, nor destroyed by intemperate violence. To rise to the full perception of the great truth, "that governments are instituted among men to secure human rights, deriving their authority from the consent of the governed," and that with a knowledge of our own rights, must be united the same just regard for the rights of others, and pure affection for our country, which dwelt in the hearts of the fathers of the revolution.

In conclusion, allow me to remind you, that with all their doings was mingled a spirit of unaffected piety. In adversity they humbled themselves before Him, whose power is almighty, and whose goodness is infinite. In prosperity they gave Him the thanks. In His aid, invoked upon their arms and counsels with sincerity of heart, was their reliance and their hope. Let us also be thankful for the mercies, which as a nation, we have so largely experienced, and as often as we gratefully remember those illustrious men to whom we are indebted, let us not forget that their efforts must have been unavailing, and that our hopes are vain, unless approved by Him; and in humble reliance upon His favour, let us implore His continued blessing upon our beloved country.

# DISCOURSE,

DELIVERED AT RUTGERS COLLEGE, ON THE FOURTEENTH  
OF JULY, 1899.

GENTLEMEN OF THE PHILOCLEAN AND PEITHESSOPHIAN SOCIETIES,

THE occasion which has brought us together is calculated to awaken earnest and anxious reflection. Youth is the season of preparation for manhood. In a short time those who are in a course of training for the duties of life, will, in the order of Providence, succeed to the charge which is now borne by their seniors; and distributed among the varied employments of social and civilized existence, be called by their own strength, each in his allotted sphere, to sustain, preserve, and improve the advantages which are derived to them from their predecessors. To fit them for the task which is thus to devolve upon them, is the design of all education.

In what manner, and by what means this great design may be most effectually accomplished—what are the methods most likely to aid in forming a wise and virtuous man, an honest and useful citizen, is a question of great interest, which cannot be too deeply pondered. An eminent man of antiquity has remarked, with equal beauty and force, that “a state without youth, would be like a year without the Spring.” But what avails the Spring, if its blossoms perish without producing fruit or seed? If sporting for a while in the gaiety of the season, and charming the senses with their bloom and fragrance, they disappoint the hope which forms their greatest value, and dwindle, fade and die, as if they had never been?

The insect obeys the law of its ephemeral existence ; it spreads its wings in the sunshine, rejoices in a moment of life, and then flutters and disappears. The brute animal is governed by its appetites, and guided by its instinct. It is neither acquainted with its faculties, nor capable of improving them. The individual and the species, for successive generations, move on in their appointed course, without undergoing any sensible change, as little subject to degeneracy from any neglect or folly of their own, as they are able, by their own efforts, to exalt or improve their nature. They live, and they die—they sink into inanimate matter, and are lost in the uninformed mass.

But man is endowed by his Maker with moral and intellectual powers, which not only distinguish him from all the visible creation, but absolutely separate him from any affinity with it. His bodily frame is dust, fearfully and wonderfully made ; but still a portion of inanimate matter, which cleaves to the ground ! His bodily powers, his sensual passions and appetites have their dwelling upon the earth, in common with the animal creation. His intellect—his power of “large discourse, looking before and after,”—aspires to communion with intelligence, and seeks its kindred beyond the limits of this life. His animal nature may truly say to the worm, “Thou art my brother, and to corruption, Thou art my sister and my mother !” His intellectual and moral faculties have no fellowship upon earth.

These faculties are the talent which his Maker has given to man. By means of them, he is enabled to exercise dominion over the earth, and to subdue it to his own enjoyment and happiness. By their means too, it is intended that he shall exercise dominion over the earthly parts of himself—that he shall regulate the exercise of his corporeal powers, subdue his passions and appetites, and live upon the earth, as if he were not of the earth, enjoying the bounties of Providence with cheerful gratitude ; doing good to his fellow men, and exalting, by rational discipline, his

own character, and the character of his race.—This is his greatest glory—this is his highest happiness—this is his obvious duty.

The faculties which thus constitute the high and distinguishing privilege of man, exalting him above all that surrounds him, and placing him but “a little lower than the angels,” are progressive and improveable. It is true, also, that the bodily powers are capable of some improvement. But the measure of their growth is limited ; and, comparatively, it is soon attained.—Their highest perfection seems to continue but for a moment. The intellectual and moral capacity, on the contrary, flourishes more and more with culture—becomes continually enlarged and invigorated, and yields a daily and increasing harvest, even when the bodily powers are visibly declining.

When the bloom has forsaken the cheek—when the beautiful smoothness of youth has yielded to the furrows of age, and the step has begun to lose something of its elasticity and briskness—the cultivated and disciplined mind, nourished by wholesome food, and enlivened by exercise, is still advancing in its career, extending the sphere of its beneficent influence, and, as it were, supplying, by its own graces, the ravages which time has made in the external form. The light within, if duly trimmed and fed, continues to spread its lustre with unabated, and even increasing splendour, when the frame that encloses it has lost its freshness, and begun to grow dim from age.

But we must also remember, that these faculties are liable to debasement and degeneracy. They will rust from sloth and indolence—they will decay from want of exercise and nourishment—and they will be smothered and destroyed, if subjected to the dominion of our passions and appetites. *That* is an empire they cannot endure. They were intended to be masters—and they will not submit to exist as slaves. The sluggard suffers the light of his intellect to go out. The drunkard drowns and extinguishes it. The one



sinks into a state of calm brutality—the other, with frenzy in his brain, resembles more a savage and maddened animal rushing upon his own destruction, but dangerous to all who are in his way. Both are guilty in the same kind, though not in the same degree. They destroy the chief talent committed to man, and they degrade and dishonour his nature.

It has already been remarked, that the higher and nobler faculties of man will not exist in subjection to his sensual nature. They decline, decay and perish, unless they are allowed to exercise the authority allotted to them by a wise Providence. The moment their just empire is successfully invaded, they begin to languish—resistance becomes gradually more feeble, until at length they are overpowered and destroyed. And what then is the condition of the individual? Wisdom and virtue are synonymous, and happiness in their attendant reward. Folly and vice, on the contrary, not only lead to misery, but are sure to be accompanied by it at every step. In their first efforts to shake off the wholesome restraints of reason and conscience, they have to maintain a painful conflict with the accusers within, which constantly mars and disappoints their expected enjoyment. The poison is manifest in the cup, and they feel that it is there. They may throw off the *rein* of reason and conscience, but they will still suffer from the *lash*! When they have gained the victory, (as it must be admitted they may,) they have subverted the natural empire which providence had intended should be established; and in the wild misrule which follows, the conquerors are sure to be the victims of the disorder and confusion they have created.

Vicious indulgence destroys the body as well as the soul. It brings to an untimely end the very capacity for enjoyment. Its food is its deadly poison. Does the sluggard enjoy his sloth? It is impossible. *There is no rest without labour.* Unbroken idleness is more irksome than severe exertion;

and it has no relief. The diligent man has delight in his honest occupation, even though it be wearisome; and he rejoices in the repose which he earns by it. He, and he alone, can duly estimate the force of the truth, that *the sabbath is made for man*! He is thankful for the refreshment and rest it affords him; while the habitual idler finds that it only increases his weariness. Has the drunkard or the debauchee any enjoyment? He has scarcely taken one step in the delirious path, before he begins to totter, and finds that by associating with vice, he has made a companion also of disease. They fasten upon him together; and however he may for a while be deluded, he soon becomes their conscious and degraded slave, the contempt of mankind gradually settling upon him, and his own reason approving the justness of their sentence. The base chains he wears are of his own forging. His own are the pain and the disgrace they inflict.

Self-denial and discipline are the foundation of all good character—the source of all true enjoyment—the means of all just distinction. This is the invariable law of our nature. Excellence of every sort is a prize, and a reward for virtuous, patient, and well directed exertion, and abstinence from whatever may encumber, enfeeble or delay us in our course. The approach to its lofty abode is rightly represented as steep and rugged.—He who would reach it must task his powers—But it is a noble task! for besides the eminence it leads to, it nourishes a just ambition, subdues and casts off vicious propensities, and strengthens the powers employed in its service, so as to render them continually capable of higher and higher attainments.

What mean the cheers which greet the ingenuous youth, when he arrives at the high honours of a seminary of learning? Why do the hearts of his parents swell with unusual gladness, and tears burst forth to relieve their almost suffocating joy? Why is this epoch in life marked, as it

every where is, with such intense and unabating interest ? The race is not ended—it is only begun. One stage is reached, but another not less critical succeeds—and even when that is passed in safety, the whole way of life is beset with temptations and dangers, which require all our exertion, with the constant aid of a gracious Providence, to resist and avoid. Why, then I repeat, this heartfelt rejoicing ? It is not merely that he has acquired the portion of learning which is taught in a college ; though that is of inestimable value. It is that the youth, whose powers have thus been put forth and tried, has given a new earnest of character, and a new assurance of hope. His habits are measurably formed—his nobler faculties expanded—and his future elevation, in some degree indicated, by the strength of pinion displayed in his first flight.

As the mother's eye marks with inexpressible delight the first steps of her child, and her ear catches, with thrilling rapture, the music of his earliest efforts to utter articulate sounds, imparting her joy to the whole household, and making as it were a family jubilee—so is the attainment of the honours of a college naturally and justly regarded with deep emotion. It fixes an important period in what may be termed the infancy of manhood, demonstrating the existence of a capacity for usefulness, and for further and higher honours. Happy are the youth who enjoy the opportunity of a liberal education—happier still are they who diligently and successfully improve it !

It is not the design of this discourse to speak of education in general—but only to make a few remarks upon what is denominated a *liberal education*—that system of instruction which is adopted in the higher seats of learning, and leads to learned honours. Institutions of this description are rapidly increasing in every quarter of our country. If the establishment of numerous seminaries of learning is to be regarded as an evidence of a corresponding increase of de-

mand for liberal education, founded upon a proper knowledge of its nature, a just appreciation of its advantages, and a fixed determination to uphold and even to elevate its standard, this circumstance must afford the highest satisfaction to the scholar, the patriot, and the philanthropist. It will promote the cause of sound learning—it will advance the honour of our country, and it will increase the happiness of mankind. That such may be its effect, every one must ardently desire.

But it must be obvious at the same time, that these advantages are only to be gained by maintaining unimpaired, and in all its integrity, the true character of the higher seminaries of learning. It is not their object to teach the simpler elements of knowledge. These must be first acquired elsewhere, as an indispensable preliminary to admission. Nor do they profess, as a part of the collegiate course, to qualify individuals for particular employments in life. This is a matter of subsequent acquisition, frequently not decided upon till after the college studies are ended.

The design of a college, as it has been well said, is, “to lay the foundation of a superior education;” not to teach fully any particular art or science, but to discipline the intellectual powers, and to store the mind with such knowledge as may lead to further attainments, and be useful in any of the occupations or pursuits which are likely to be the lot of those who have the advantage of a collegiate education. In a word, to place distinctly before the student the high objects to be aimed at—to teach him how they are to be attained—to stimulate him by worthy motives—and, after unfolding to him his own powers, and the mode of employing them, to send him forth with a generous and well directed ambition, and an instructed and disciplined mind, to follow out the course in which he has thus been trained.

Such a system, it must be evident, admits of no concession to individual views or inclinations. It works by gene-

ral means, and for a general end. It proposes the same instruction for all ; the same discipline ; the same rewards ; proceeding upon the assumed basis, that the plan thus adopted is in itself the best calculated to produce the desired general result.

In Sparta, the education of youth was a public concern. At an early age, children were taken from their parents, and placed under the care of masters appointed by the state, to prepare them, according to their notions, to become good citizens. The ancient Persians and the Cretans adopted a similar plan. With them too, education was a matter of public regulation. Among the Athenians and Romans, youth were not thus detached by law from the authority and care of their parents. But their education was justly deemed to be a matter of the highest importance, and conducted, no doubt, upon a general system, adapted to their manners and circumstances. Whatever opinion we may entertain of the methods they adopted, and the end they proposed—however different may have been the character intended to be formed, by the institutions of the Spartans and the Persians, from that which modern education proposes to cultivate—yet there is one point which has the sanction of their authority as well as the authority of succeeding times—that the education of youth having reference to a determined end, ought to be conducted upon a general plan, and that plan the best that is attainable for the end proposed, and carried to the highest perfection of which it is susceptible. It is not meant to be contended, that in modern times, and in large communities, when there is so great an inequality in the condition of men, the highest education is, or ever can be within the reach of all, or even of a very considerable number. In our own country, favoured as it is by the bounty of Providence, with advantages such as no nation has ever before enjoyed, how many are there to whom the benefits even of the humblest education are not extend-

ed ! Enlightened benevolence is happily exerting itself with unwearied diligence, to remedy this reproachful evil ; and it is to be hoped, that the time will soon come, when not a child will be left destitute of the means of acquiring at least the simpler elements of knowledge. This, however, is a subject of vast extent and interest, upon which it is not intended now to touch.

When, therefore, we speak of a "*superior education*," or a "*liberal education*," or, which ought to be equivalent, a "*collegiate education*," we speak of that which has one common purpose or object, and which of course is necessarily itself but one. That it is applicable to all the youth of a country, whatever may be their condition or preparation, or whatever may be their future views in life, is what, as already intimated, it is not intended to affirm. The greater number cannot enjoy its advantages. At the age when the course of instruction in a college usually begins, some are obliged to labour for their subsistence ; some are condemned to lasting ignorance by the neglect of parents or friends, or by the imperious force of circumstances ; and some are already fixed to the occupations which are to employ their maturer years. We would not be understood by this remark to suggest, that superiority consists in the advantages we possess—it is only in the use we make of them, for which we are responsible, exactly in the proportion of their extent. All honest industry is honourable, as well as useful. Nothing is disgraceful but idleness and vice ; and the disgrace they bring with them is greater or less, as our opportunities have been more or less favourable. In the judgment of mankind, as well as in the awful judgment of Him from whom we have received all that we possess, the improvement required of us is according to the talent committed to our care. Much is therefore expected of him who has the means of attaining the highest intellectual and moral advancement. He is not to look down with a feeling

of pride, upon other employments or conditions of life, as if they were inferior; but comparing himself with the most diligent in each—to examine whether he has equally with them improved the talents and opportunities vouchsafed to him—whether, in the race of honest exertion—the only generous competition that all can engage in—he has equalled, or excelled them—whether he has better or worse fulfilled the duty he owes to his day and generation.

The humblest labourer, who strenuously performs his daily task, and honestly provides an independent subsistence for himself and his family, is inconceivably superior to the sluggard and idler, though the latter may have had the opportunity of education in a seminary of learning.

There are some, who suppose that the business of instruction might be better adapted to the inclinations and views of individuals—that each student in a college might be taught only that which he desires to learn, and be at liberty to dispense with such branches of learning as appeared to him unnecessary or inapplicable, and yet receive collegiate honours! This is an opinion which is perhaps gaining ground, and which, it cannot be denied, has been adopted by several distinguished men, and supported by plausible arguments.

Education, in all its parts, is a concern of so much consequence, so deeply and vitally interesting, that it ought not to be exposed, without great caution, to hazardous experiments and innovations. Is it, then, susceptible of no improvement? Is the human mind, progressive upon all other subjects, to be stationary upon this? Shall not education be allowed to advance with the march of intellect, and its path be illuminated with the increased and increasing light of the age? Or shall it be condemned to grope in the imperfect twilight, while every thing else enjoys the lustre of a meridian sun? These are imposing questions which are not to be answered by a single word. Admit-

ting the general truth of that which they seem to assert namely, that education, in all its departments, ought to be carried to the highest attainable perfection, and that the methods of reaching that point deserve our most anxious and continued attention—it must at the same time be apparent, that as long as the argument is merely speculative, implying objections to existing methods of instruction, and raising doubts about their value, without offering a distinct and approved substitute, great danger is to be apprehended from its circulation.

There is no doubt that improvement may be made in the seminaries of our country—there is no doubt that it ought to be made—and it is quite certain that it requires nothing but the support of enlightened public sentiment to bring it into operation. The improvement adverted to is improvement in degree—a better preparation for admission into college—a somewhat later age, and of course more mature powers—and, as a consequence, higher and more thorough teaching. The result can not be secured, unless the means are employed; and their employment does not depend upon those who are immediately entrusted with the care of the instruction of youth. Professors and teachers would unfeignedly rejoice, in raising the standard of education—in advancing their pupils further and further in the path of learning—if parents, duly estimating its importance, could be prevailed upon to afford them the opportunity—for *they*, (unless totally unfit for their trust,) must be justly and conscientiously convinced of the value of such improvement. But their voice is scarcely listened to. By a prejudice, as absurd and unreasonable as it is unjust, *they* are supposed to be seeking only to advance their own interest; and *their* testimony is, on that account, disregarded; when, upon every principle by which human evidence ought to be tried, it is entitled to the highest respect. *Their* means of knowledge are greater than those of other men. They learn



from daily experience—they learn from constant and anxious meditation—they learn from habitual occupation. It is theirs to watch with parental attention, and with more than parental intelligence, the expanding powers of the pupils committed to their charge. It is theirs to observe the influence of discipline and instruction in numerous instances, as it operates upon our nature—and it is theirs, too, with parental feeling to note the issues of their labours, in the lives of those who have been under their charge—to rejoice with becoming pride, when following an alumnus of the college with the eye of affectionate tenderness, they see him steadily pursuing a straight forward and elevated path, and becoming a good and an eminent man—and to mourn, with unaffected sorrow, over those who have fallen by the way, disappointing the hopes of their parents and friends, turning to naught the counsels and cares that have been bestowed upon them, and inflicting pain and misery upon all who felt an interest in their welfare. *Experto crede*, is the maxim of the law; and it is no less the maxim of common sense. Why is it not to be applied to the case under consideration, as it is to all others which are to be determined by evidence? The sneering and vulgar insinuation sometimes hazarded by those who find it easier to sneer and insinuate, than to reason, that teachers, as a body, have a peculiar interest of their own, sufficient, upon questions which concern their vocation, to bring into doubt the integrity of their judgment, and thus to make them incompetent to be witnesses, if rightly considered, is not so much an insult to this useful and honourable, and I may add, in general, faithful class of men, as it is to the parents who entrust them with their children. What judgment shall we form of *their* intelligence—what shall we say of *their* regard for their offspring, if, at the most critical period of life, they place the forming intellect in the hands of men of more than questionable integrity, to be fashioned by them into

fantastic shapes to suit their own purposes, or gratify their own whims? The truth is, that it is an appeal to ignorance, which can succeed only with those who are unable or unwilling to think, and is employed chiefly for want of solid argument.

The circumstances of our country, it must be admitted, have encouraged and have favoured an early entrance into life, and so far have been averse to extended education. This cause has naturally, and to a certain extent, justifiably, induced parents to yield to the restless eagerness of youth, always anxious to escape from the trammels of discipline, and confide in the strength of their untried powers.

Pride, too, a false and injurious pride is apt to lend its assistance. Instead of measuring the child's progress by his advancement in learning and in years, the parent is too much inclined to dwell only upon the advance he has made in his classes, and to note, with peculiar gratification, the fact, that he is the youngest of the graduates. Often, when it is evident to the teacher, that the pupil's lasting interest would be promoted by reviewing a part of his course, the very suggestion of being put back, is received as an affront, and indignantly rejected, though offered from the kindest and best considered motives. It is a mistake, a great mistake. To hurry a youth into college, and hurry him out of it, that he may have the barren triumph of extraordinary forwardness, is to forget the very end and object of education, which is to give him the full benefit of all that he can acquire in the period, which precedes his choice of a pursuit for life. What is gained by it? If, as frequently happens, he be too young to enter upon the study of a profession, there is an awkward interval when he is left to himself; he is almost sure to misapply and waste his precious time, and is in great danger of contracting permanent habits of idleness and dissipation. But even should this not be the case, of what consequence is it to him, that he should enter upon

a profession a year sooner or later, compared with the loss of the opportunity of deepening, and widening and strengthening the foundations of character, which are then to be laid in a seminary of learning. This opinion is not without decided support. Many intelligent parents have been observed to adopt it in practice, voluntarily lengthening out the education of their children beyond the ordinary limits. Such an improvement as has now been alluded to, ought unquestionably to be aimed at. The progress of liberal education ought to bear some proportion to the rapid advances our country is making in other respects, and to the character and standing which her wealth, her strength, and her resources require her to maintain. It is especially due to the nature of our republican institutions, in order to win for them still higher esteem with mankind, that their capacity should be demonstrated, to encourage and produce whatever is calculated to adorn and to improve our nature, and to contribute our full proportion to the great society of learning and letters in the world. It would be much to be regretted, if the multiplication of colleges were to have the contrary effect, of lowering the standard of education, or of preventing its progressive elevation. Let the competition among them be, not who shall have the most pupils within their walls, but who shall make the best scholars!

But may there not be improvement in kind, as well as in degree? May not the course of studies itself be beneficially altered, excluding some, which are now in use, and adopting others which have not hitherto been introduced—changing the relative importance of different objects of study—making those secondary, which at present are principal, and those principal which are now, in some degree, secondary—or, adopting a flexible and yielding system, may not the studies be accommodated to the views and wishes of individuals, permitting each pupil to pursue those, and

those only, which he or his parents or friends may think proper to select as best adapted to his expected plan of life? It would be rash and presumptuous to answer that such improvement is impossible; and it would be unwise, if it were practicable, to check or discourage the investigation of matters so important to the welfare of man. The subject is one which at all times deserves the most careful consideration; and the highest intellect cannot be better employed than in examining it in all its bearings. But its unspeakable importance inculcates also the necessity of great caution. It is dangerous to unsettle foundations. Doubts and objections to existing systems, without a plain and adequate substitute, are calculated only to do mischief. By bringing into question the value of present methods of instruction, they tend to weaken public confidence, to paralyze the efforts of the teacher, and to destroy or enfeeble the exertions of the student. A strong conviction of the excellence of the end, is the indispensable incitement to the toil of attaining it. Without this stimulus, in all its vigour, nothing rational will be achieved. The love of ease, which is natural to us all, will lend a ready ear to the suggestion, that labour would be wasted; and the misguided youth, doubting the usefulness of the task that is before him, and expecting something (he knows not what) more worthy of his zeal and energy, will be like the foolish man, who stood upon the bank of a river, waiting for the water to run out, and leave the channel dry for him to pass over.

*Experimentum in corpore vili*, is the cautious maxim of physics. A generation of youth is of too great value to be experimented upon; and education is of too much consequence to hazard its loss, by waiting for the possible discovery of better methods. It is a great public concern, and should be dealt with accordingly; until a specific change shall be proposed, which, upon a deliberate and careful examination, shall meet the acceptance of the greater part

of those who are best able to judge, so that they can conscientiously, and with full conviction, recommend it to general adoption, as entirely worthy of public confidence, let us cling to that which has been proved to be good. Quackery is odious in all things, but in none more than in this. *Stare super vias antiquas*, is a safe precept for all, at least until a way be pointed out that is clearly and demonstrably better.

Speculation, however ingenious, is not knowledge; nor are doubts and objections to be entertained, where decision is of such vital importance. Time is rushing on—Youth is passing away. The moments, that are gliding by us, will never return. The seed time neglected, there will be no good harvest. Poisonous and hateful weeds may occupy the soil, which, under good culture, would have yielded excellent fruit. The craving appetite of youth must be satisfied. If not supplied with sound and wholesome food, it will languish for want of sustenance, or perhaps drink in poison and destruction. The brute animal, without reason, is guided by an unerring direction, to the provision made for its support, each individual obeying his own instinct, without aid or counsel or restraint from the others. But man, excepting the direction he receives to the beautiful fountain of nourishment, provided for the short period of helpless and unconscious infancy, has no such determined instinct. He has a large range, and a free choice. "The world is all before him, where to choose;" and reason is given, to select for him that which is for his advantage. Nor is the rational individual left dependent upon his own unassisted intelligence for his guidance. Until his faculties, which are progressive, have arrived at a certain maturity, it is in the order of Providence, that he should have the benefit of the enlightened reason of his species imparted to him, for his own sake, by parents, by teachers, by friends, and by the counsels of the wise and the virtuous,

which he cannot enjoy but upon the terms of being subjected to their authority. It is theirs to lead him on his way—it is his to follow the path they point to. But if the guide stand doubting and perplexed, what will become of the follower ?

That a collegiate education can be so modified as that each student may be permitted to choose his own studies generally, or even to a limited extent, and yet receive the honours of a college, is a proposition, which, to say the least of it, must be deemed to be very questionable.

Without intending to occupy your time with any thing like a discussion of this question, it may, nevertheless, be allowable to remark, that the suggestion, however plausible in itself, seems to be founded in an erroneous conception of the nature of such an education. However it may be styled a collegiate education—a superior education—a liberal education—it is still only a portion of preliminary education. It is not designed, as has already been stated, to qualify the student in a special manner for any particular profession or pursuit—to make him a Divine, or a Lawyer, or a Physician—but to aid in the development of all his faculties in their just proportions ; and by discipline and instruction, to furnish him with those general qualifications, which are useful and ornamental in every profession, which are essential to the successful pursuit of letters in any of their various forms, and, if possible, even more indispensable to the security and honour of a life of leisure. Nor does it set up the extravagant pretention of supplying him with a stock of knowledge sufficient for all purposes, and sufficient for its own preservation, without further exertion. It gives him the keys of knowledge, and instructs him how to use them for drawing from the mass, and adding to his stores. It teaches him the first and greatest of lessons—it teaches him how to learn, and inspires him at the same time, if it succeed at all, with that love of learning, which will invi-

gorate his resolution in the continual improvement of this lesson. The momentum, if rightly communicated, and rightly received, will continue to be felt throughout his life. But it is unnecessary to dwell longer on this part of the subject, as it has lately received an ample and able exposition, in a report made by the faculty of a neighbouring institution,\* which, (if I may be permitted to venture a judgment upon the work of so learned a body,) does them the highest honour.

The suggestion under consideration would perhaps be entitled to more respect, if in fact the destination of youth for life always, or even generally, preceded their entrance into college. But that, it is believed, is not the case. The fond partiality of a parent may sometimes discern, or fancy it discerns in a child, the promise of eminence in some peculiar walk. But it would be unwise to decide finally, before a decision is necessary, and before the subject is ripe for decision. It is in the college that the youth has the last trial with his equals. There his growing powers are more fully exhibited, and placed in a clearer light. And there, too, it often happens, that an inclination is disclosed, which not being unreasonable in itself, a prudent and affectionate parent may think fit to indulge. The time of leaving college would, therefore, seem to be a much more suitable occasion for decision than the time of entering it. But even such a decision is not always unchangeable. How many instances have occurred, of youth, who, after receiving the benefits of a liberal education, have engaged in one pursuit, and subsequently, with the approbation of their parents and friends, have betaken themselves to another, with distinguished success! Several present themselves to my recollection, and some of them of men who have attained, and are now enjoying the highest eminence.

\* Yale College.

How often does it happen, much later in life, that men are compelled by circumstances, or constrained by a sense of duty, to change their occupations? It is precisely in such instances that the advantages of a liberal education are most sensibly felt—of that early training, and general preparation, which, not being exclusively intended for any one pursuit, are adapted to many, if not to all, and confer upon the individual a sort of universality of application and power. In a moment like this, the means which education has supplied, come to our aid, like the neglected and almost forgotten gift of an old friend, hallowed and endeared by the associations they bring with them. And in such a moment, the individual who has not had the same opportunity, most keenly feels the loss.

Nor must we forget that in this our country, every individual may be called upon to take a part in public affairs, and there to maintain his own character, and the character of the state or nation. And even should not this occur, still he is to mingle in the intercourse of polished society, where his station in the esteem and respect of others, will be assigned to him, according to the measure of his improvement and worth, estimated by the scale of his opportunities. Being, as it were, a part of the Corinthian capital of society, he will be unworthy of his place, if he is destitute of the ornaments and graces that belong to his station.

But upon the plan that is now in question, who is to choose for the youth the studies he will pursue? Surely it cannot be gravely asserted, that, at the usual age of entering into college, the choice ought to be left to himself. Why has Providence committed the care of children to the affectionate intelligence of parents? Why have human laws provided for them tutors and guardians? Why have schools, and seminaries of learning been established, and courses of education and discipline prescribed, but to give them the benefit of that experience and knowledge which they do not themselves possess?



To suppose that a youth, at such an age, is competent to decide for himself what he will learn, and how much he will learn, is to suppose that he has already had the experience of manhood, under the most favourable circumstances—that he is competent to educate himself—nay, that he is already educated—and instead of needing instruction, is qualified to impart it to others. Is the choice then to be made by parents? To them it undoubtedly belongs, as a right, to determine for their children, whether they will send them to college or not—but there their authority terminates. It cannot be pretended that every parent, or that any parent has, or ought to have, or can have a right to decide upon the discipline and instruction to be adopted in a college, though he has the power of withdrawing his child, if he think fit to do so.

Admitting parents to be fully competent to resolve a question of so much depth and difficulty—as many unquestionably are—and admitting, too, that their views are more wise and accurate, and entitled to greater deference than the collected and continued wisdom which has devised, and which preserves the system in being, still it would be obviously impracticable to indulge them. There could not, in such a case, be statutes or laws, or discipline, or system. In short, there could be no government. To some, it may seem harsh, but it is believed to be perfectly true, that when a youth is once placed in a College, selected after due deliberation, the less interference there is on the part of the parent, except in cases of manifest wrong done to him, (which rarely or ever occur in our principal institutions,) and the more unreservedly the pupil is committed to the authorities of the institution, the better it will be both for parent and child.

Above all things, a parent should sedulously guard against the introduction of a doubt into the mind of a student, of the justice and necessity of the authority exercised

over him, or of the excellence of the studies he is required to pursue. Such doubts must inevitably produce insubordination and indolence, and will end in the disappointment of his hopes. Enthusiastic and ardent zeal, an estimate even exaggerated, of the excellence of a given pursuit, amounting almost to folly in the judgment of by-standers, are the needful stimulants to successful enterprize. Nothing great is achieved without them. The heart must go along with the understanding. A strong passion must take possession of the soul, inspiring it with warmth, and with enduring energy, and unconquerable resolution; so that all its faculties may be fully and steadily exerted, and overcoming the vis inertię of our nature, and deaf and blind to the temptations that would seduce it from its course, it may press forward continually towards the prize which is to be the reward of its toils. Such ought to be the feelings of the youth who is favoured with the opportunity of a liberal education. Devotion to his studies, as excellent in themselves, affectionate respect for his teachers, as faithful guides and impartial judges, an honourable competition with his equals, in virtuous exertion, and a conscientious observance of the laws of the institution—these are the habits which will lay a deep foundation for the structure of future usefulness and eminence. The honours of the college, their first fruits, and their just reward, are the gratifying proofs of a capacity for further triumphs, and constitute the richest, and most acceptable offering which filial duty can present as an acknowledgment and requital of parental care.

That part of a course of liberal education, however, which has been most frequently assailed, is the study of the Greek and Roman Classics—what is emphatically called Classical learning. Some have insisted that it ought to be altogether excluded; and others, that it does not deserve to occupy so much of the time and attention of youth.

Mr. Locke, who himself enjoyed the full benefit of the treasures of ancient learning, seems to make a compromise of the matter; for while he admits that the languages may be useful to those who are designed for the learned professions, or for the life of a gentleman without a profession, he seems to consider that they, as well as philosophy, are calculated rather to have an injurious effect upon the general character, than otherwise. The broader ground of entire exclusion, however, as has already been said, has had its advocates. Many years ago, a distinguished citizen of the United States, whose memory, let it be said, is entitled to great veneration, among other things for the example he gave of untiring industry and youthful vigour in his varied pursuits, continued to almost the last day of a long life, published an essay, in which, with his usual ingenuity and force, he contested the value of classical learning as a branch of education. It appears from a subsequent publication, by the same author, that this essay produced many replies, and that it also produced a complimentary letter (now published with the essay,) from a gentleman who is stated to have been at that time the principal of an academy. In this letter, after complimenting the author, the writer proceeds as follows—"There is little taste for them (the learned languages,) in this place. In our academy, where there are near ninety students, not above nineteen are poring over Latin and Greek. One of these nineteen was lately addressed by a student of arithmetic in the following language—"Pray, sir, can you resolve me, by your Latin, this question? If one bushel of corn cost four shillings, what cost fifty bushels?" A demand of this kind, from a youth, is to me a proof of the taste of Americans in the present day, who prefer the *useful* to the *ornamental*!" This was surely an extraordinary triumph over the poor Latanist, and a very singular evidence of what the good principal was pleased to call "American taste!" Who

ever imagined that the study of the Greek and Latin would teach a boy the first rules of Arithmetic? Or who was ever absurd enough to contend that Greek and Latin were to be taught to the exclusion of the simplest elements of pure mathematics? They have their appropriate uses and advantages; but they do not profess to be themselves the whole of education, nor to accomplish every thing that is desirable. They do not give sight to the blind, nor hearing to the deaf, nor speech to the dumb; but when these faculties exist in their usual perfection—as is happily the case with the far greater part of mankind—and there is the ordinary portion of talent, they furnish an occupation, which is both useful and ornamental, which is not inconsistent with the necessary attainments in mathematics, and which may not only well go along with the acquisition of our own language, but is deemed to be indispensable to its accurate knowledge, and highest enjoyment.

But however feeble was the commentary of the Principal, and however ignorant was the argument of the “student of arithmetic,” yet, for him, it was not in a wrong spirit. Arithmetic was his pursuit, and it was fit that he should think well of it.—But the poor student of Latin! What could be expected from *his* labours in a seminary where the study was systematically depreciated; and the head of it, from whom he was to look for encouragement and assistance, gloried (conscientiously, no doubt,) in having nearly expelled it from his school? The teacher might, and probably did, endeavour to perform his duty; but it must have been coldly and heartlessly done. Instead of breathing warmth and animation into the atmosphere, to invigorate the tender plants entrusted to his care, they must have been in imminent danger of being stunted in their growth, by chilling and withering indifference.

Of the opinions which have been mentioned, the one proposing entirely to exclude the ancient languages from a

course of liberal instruction—and the other, to reduce the time and attention devoted to them, it would be difficult to say, that as applied to this country, the one is more to be deprecated than the other. Are the languages overtaught now? Will they bear a reduction? The reverse is known to be the fact. Compared with the teaching in the German schools, where the design is to make scholars, compared with the teaching in the schools of England, where the design, in addition to this, is to qualify men for all the higher employments of life, as well as for a life without particular employment, it can scarcely be said that here they are taught at all. Excepting in the profession of divinity, is it too strong to affirm that there is scarcely such a thing as scholarship? And even in that profession, how many are there, in proportion to the whole number engaged in its sacred duties, who would be able to encounter a learned infidel with the weapons of ancient learning? We have eminent lawyers—we have distinguished physicians—enterprising and intelligent merchants—and a fund of general talent capable of the highest elevation in every employment or pursuit of life. Occasionally we meet with one among them, commonly of the old stock, in whom is discerned the elegant influence of classical literature.

But where are our eminent scholars? Where are the greater lights, ruling with a steady and diffusive splendour, and vindicating their claim to a place among the constellations which shine in the firmament of learning? Nay, how few are there among us, of our best educated men, who, if called upon to bring forth their stores, would be able to say with Queen Elizabeth, that they had “brushed up their Latin,” or would have any Latin to brush up? The truth is that this branch of study is already at the very minimum, if not below it. It will not bear the least reduction. It positively requires to be increased in teaching, and raised in public esteem. Classical learning neither falls in

showers, nor flows in streams. Here and there a solitary drop appears, sparkling and beautiful to be sure, like the last dew on a leaf, but too feeble, without the support of its kindred element, even to preserve itself, and utterly powerless to enrich or fructify the neighbouring soil. To propose a reduction, is therefore equivalent, at least, to an entire exclusion, if it be not worse. Less taught than it now is, or less esteemed, the teaching would be almost a false pretence, and the learning a waste of time. It would be as well at once to blot it from the course, and, as far as in our power lies, to let the Greek and Latin languages sink into oblivion, and be lost in profound darkness, like that from which, by their single power, they have once recovered the world.

This would be a parricidal work for civilization and science. But if it is to be accomplished, the *mode*, is not what is to characterize it as unnatural. Before we advance to a conclusion of such incalculable importance, let us first consider what it is, and then endeavour to be fully assured that it is right. If it be once decided that the study of the ancient languages can be dispensed with in a collegiate education, and the honours of a college obtained without it, there is no difficulty in perceiving it must also be dropped in the preparatory schools. Why begin it, if it is not to be pursued? Why take up time in acquiring what is afterwards to be thrown aside as rubbish, and forgotten? Forgotten it inevitably will be, if it be entirely discontinued at the time of entering college. By what motives or arguments will a boy be persuaded to apply himself to learning in a Grammar School, what is not necessary to obtain for him the honours of a college, and what he is distinctly told will be of no use to him in life? It is absurd to think of it. The youngest child has sagacity enough to understand an argument, which coincides with his own inclination, and to apply it to the indulgence of his own natural love of ease.

Tell him that he might as well be unemployed, and, without having ever studied logic, he will be very apt to jump at once to the seductive conclusion of idleness.

These languages, let it be remembered, have hitherto not merely formed a part, they have been the very basis of a liberal education. I might almost say they have been education itself. From the revival of letters to the present time, they have held this station, through a period of five hundred years, not in one country only, but in all the civilized world. They gained it by their own merits, and they have kept it by their unquestionable success. Would it be wise or prudent to cast them off, unless we were fully prepared to supply the large space they have occupied, by something equal, at least, if not superior? This is no metaphysical question; nor does the answer to it require the peculiar powers of Mr. Locke, mighty as they confessedly were. It is eminently a practical question, which common sense is fully able to decide. It may be stated thus; education, having a given end, and a certain plan of education having approved itself during some hundreds of years, and still continuing daily to approve itself to be well suited to attain that end, is it wise or rational to require that it shall be vindicated upon original grounds, and be rejected like a novelty, unless it can be justified to our complete satisfaction, by arguments *a priori*? Of what consequence is the *modus operandi* if the desired result be attained? That is a good time-keeper which keeps good time, no matter how constructed. That is good food which is found to nourish the body, whatever peptic precepts may say to the contrary. And that is good exercise, which gives vigour and grace to the limbs, even though a Chinese lady might not be allowed to use it. Against such a fact, once well established, argumentative objection ought to be unavailing, or there is an end to all just reasoning.

"What can we reason, but from what we know?"

This proof is manifest, in respect to nations, as it is in respect to individuals. It is astonishing, that Mr. Locke could have entertained the suggestion for a moment, that the study of the languages and philosophy was unfriendly to the formation of prudent and strong character, when he looked around upon his countrymen, and perceived, as he must have done, that they are not less distinguished for their attachment to these studies, than for what Mr. Burke has called, "the family of grave and masculine virtues." Constancy, resolution, unconquerable spirit, a lofty determination never under any circumstances of adversity to admit the betraying counsels of fear, were not more signally exhibited by the old Romans, when Hannibal, triumphant, and seemingly irresistible, from the slaughter at Cannæ, was thundering at the gates of Rome, than they have been by that nation, which Mr. Locke's genius has contributed to illustrate and adorn. This same study has gone hand in hand with every profession and pursuit, refining, exalting and dignifying them all. Theologians, statesmen, lawyers, physicians, poets, orators, philosophers, the votaries of science and of letters, have been disciplined and nourished by it, and under the influence of its culture have attained the highest excellence. The arts of life have, at the same time, kept on with steady pace, so that the people whom Cesar spoke of as, in his time, "*Britannos toto orbe divisos*," now, if not in all respects at the very head of the European family, are certainly not inferior to any of its members. Let those who cavil at a liberal education, and those especially who question the value of the Greek and Latin languages, answer this fact. The tree cannot be bad which produces such fruit. It is unphilosophical to doubt the adequacy of a cause to produce a given effect, when we see that the effect is constantly produced by that cause; and it is unphilosophical to search for another cause, when we have found one that is sufficient. If the study of



the ancient languages has been found, by long experience, to discipline and nourish the intellectual faculties, why should we doubt that it is efficacious for that purpose? Why should we go about to seek for something else, that if it succeed will but answer the same purpose—and if it fail, leaves us entirely destitute? One will flippantly tell us that it is spending too much time about words, which could be better employed about things. The great British lexicographer has unintentionally given some countenance to this notion, in the Preface of his Dictionary. A man, who had accomplished such a labour, might be permitted, at its close, to feel the departure of the spirit which had sustained him in its progress, and in the pathetic melancholy of taking leave, so eloquently expressed as almost to draw tears from the reader, he might be allowed even to depreciate his own work, by admitting that “words are the daughters of earth, and that things are the sons of heaven.” But even the authority of Dr. Johnson cannot be permitted thus to degrade the pedigree of words, or diminish their importance. Articulate sound is from heaven. Its origin is divine. The faculty of speech is the immediate gift of Him who made us, and its destitution (which his good Providence sometimes allows to occur) is felt to be a great calamity. Language—words—are the exercise of this faculty, as thought is the exercise of the faculty of thinking. The one is worthy of improvement, as well as the other—nay, we can scarcely conceive of their separate existence, or their separate cultivation—and hence the first step in the instruction of the dumb is to teach them the use of language. Words without thought are idle and vain. Thought, without the power of expressing it, is barren and unproductive. “Proper words in proper places,” is the point we all strive to attain; and this is what constitutes the perfection of the power of communicating with each other. It is true, therefore, that “words are things;” and there is no better proof of it than

this, that the most extraordinary, may I not say the most vulgar error sometimes obtains currency, by means of an epigrammatick sentence, by the mere charm of the collocation of words. The fact is, that they occupy our attention throughout our lives; and a greater or less command of them is one of the chief visible distinctions that mark the different orders of intelligence. The child is taught to speak, to spell, and to read—the youth to declaim and to compose—and the *man* strives perpetually to improve and perfect himself in the use of language, by frequent exercise, and the study of the best models. Demosthenes is said to have copied the history of Thucydides eight times with his own hand, and to have committed the greater part of it to memory, merely to improve his style. His orations were composed with the utmost care; and they were retouched, improved, and corrected with the minuteness of a Flemish painter—even to the alteration of parts of words. He was never satisfied till he had given the highest possible finish to his work. Was this an idle labour? More than two thousand years have since rolled by; and the language of Athens, in the days of Demosthenes, cannot be said to be now spoken in the world. Yet is he confessed to be the undisputed master in his noble art. His orations, said by a strong figure to have been as an earthquake in ancient Greece, still agitate the bosom which is sensible of the powers of eloquence, and offer the best model to its votaries. Like the fine remains of the Grecian chisel, they stand in severe, but beautiful and commanding simplicity, as if conscious that their title to respect, being founded in nature and in truth, though perfected by consummate skill, was equally available in every age.\*

\* Cicero not only studied the Greek language, but to such an extent as to be able to declaim in it, and to excite the strong but melancholy admiration of Appolonius. "As for you, Cicero," he said, after hearing him declaim in Greek, "I praise and admire you: but I am concerned for the fate of Greece."

If it therefore be conceded that the study of the ancient languages is calculated to assist us in what is disparagingly termed the learning of words, or, as it ought to be expressed, in acquiring a good style—that it improves the taste, and corrects the judgment—this, though but a part of its merits, would go far to vindicate its right to a place in every system of liberal education.

Sometimes it is objected, as it was by the principal of an academy, already quoted, that an acquaintance with these languages is ‘ornamental,’ but not ‘useful.’ The meaning of this objection depends upon two words, which, appearing to be exact, are notwithstanding, as ambiguous, perhaps, as any in our vocabulary. They are often used without a definite sense in the mind of the speaker, and very seldom with any certainty of the same understanding on the part of the hearer. If it were necessary to endeavour to be precise on this subject, we might be permitted to say, that in the opinion of many very intelligent people, nothing is properly ornamental that is not in some way useful. But when we have thus disentangled ourselves of one perplexing word, we are obliged to encounter another. What is useful, and what is not useful? Are mankind agreed about it? By no means. How then are we to determine what is useful? The answer seems to be this—we are to arrive at a conclusion by considering man in his various relations, and thence inferring, as we justly may, that every thing is useful which contributes to the improvement or the innocent gratification of himself or of others, or qualifies him more effectually or acceptably to perform his duties. Does any one object to those exercises of youth, which give a graceful carriage to the body? Are they not admitted to be useful? And is it less important to

She had nothing left her but the glory of eloquence and erudition, and you are carrying that too to Rome.”

give a graceful carriage to the mind? Are good manners, the external graces, worthy to be cultivated, because they give pleasure to others? And are the graces of the intellect to be entirely neglected? Is the generous youth to be told that nothing is necessary but to be able to compute the cost of fifty bushels of corn? The proprieties, and even the elegancies of life, when they do not run away with the heart, nor interfere with the performance of serious duties, are well deserving our attention. But let it not be imagined, that in thus insisting upon the general argument of experience—the greatest of all teachers—in favour of classical learning, or in answering one or two particular objections, it is meant to be conceded, that it cannot be vindicated upon original grounds. It can be, and it has been, repeatedly and triumphantly shown, that these unequalled languages, which, as was long ago said of them, “have put off flesh and blood, and become immutable,” are precisely calculated to perform the most important general offices of a liberal education, in a manner that no other known study will accomplish. They awaken attention—they develope and employ the reasoning faculty—they cultivate the taste—they nourish the seeds of the imagination—give employment to the memory—and, in a word, they discipline and invigorate, in due proportion, all the intellectual powers, and prepare them for orderly and effective exertion in all the varied exigencies which may require their action. Nor is this all. They lay the foundation of that learning which will abide with us, and increase our enjoyments in all the vicissitudes of life.

But the limits of a discourse would be unreasonably transcended, by an attempt to enter into a more particular examination of this subject. Nor is it necessary that I should thus trespass upon your patience, already so largely taxed—Ablert heads, and stronger hands—strong in good learning—have been repeatedly employed upon the work—and I should only enfeeble their demonstrations, by at-

tempting to restate the process. As a witness, however, stating the result of his observations, confirmed by the observations of others, I may be allowed to say, that to a young man, entering upon the study of a liberal profession, a thorough groundwork of classical education is like a power gained in mechanics, or rather it is the foundation wanted by Archimedes for his fulcrum! It gives him a mastery of his studies which nothing else can supply. Of its other influences, allow me to quote to you the testimony of a distinguished female, who, to uncommon opportunities united extraordinary genius and power of observation, and is entirely free from all suspicion of partiality. "The English Universities, (says Madame de Staël, in her 'Germany,') have singularly contributed to diffuse among the people of England that knowledge of ancient languages and literature, which gives to their orators and statesmen an information so liberal and brilliant. It is a mark of good taste to be acquainted with other things besides matters of business, *when one is thoroughly acquainted with them*; and, besides, the eloquence of free nations attaches itself to the history of the Greeks and Romans, as to that of ancient fellow countrymen. \* \* \* \* The study of languages, which forms the basis of instruction in Germany, is much more favourable to the progress of the faculties in infancy, than that of the Mathematics and Physical sciences." For this she quotes the admission of Pascal.

Some part of the doubt, which, in this country, has been insinuating itself into the public mind, is owing to the imperfect and insufficient manner in which the languages have been taught; or rather, it should be said, in which they have been learned; for there has probably been at all times a disposition to teach them. Enough has not been acquired to fix a permanent taste in the student himself, or to demonstrate its value to others. The consequence is, that the graduate suffers his little stock to decay from neglect, and his parents and friends exclaim that

learning is of no use. Another consequence is, that there is no scholar-like mind, to exert its influence upon the community, and operate upon the mass of public opinion. The corrective is in more thorough teaching. It will require more time and more labour from the student. But time thus employed, will be well employed. And as to labour—if he desire to arrive at excellence of any sort, he can learn nothing better than how to apply himself with diligence to the work that is before him. There is a great deal of affectation in the world, of facility and expedition in the performance of intellectual tasks—of doing things quickly, and without preparation or exertion, as if by an inspiration of genius, and differently from those, who, by way of derision, are called plodders! It is a poor affectation. Sometimes it is maintained at the expense of sincerity, by concealing the pains that are really taken. Oftener it is only the blustering of conscious weakness and indolence. The highest and surest talent—that which will hold out longest, and often reach the greatest elevation—the only talent, I might almost say, which is given to man for intellectual achievement—is the talent of applying his faculties to produce a good result—that is, of labouring with success. No one need be ashamed of possessing, of exercising, or of cultivating it. The great lesson of life is to apply ourselves diligently to what is before us. Life itself is but a succession of moments. The largest affairs are made up of small parts.—The greatest reputation is but the accumulation of successive fruits, each carefully gathered and stored. The most learned scholar began with learning words. Every day is by itself a day of small things. But the sum of our days makes up our life—and the sum of our days' work makes up the work of our life. Let every one, therefore, who would arrive at distinction, remember, that the present moment is the one he is to improve, and apply himself diligently to its improvement.

## ARGUMENT,

IN THE CASE OF THE CHEROKEE NATION vs. THE STATE OF GEORGIA, BEFORE THE SUPREME COURT OF THE UNITED STATES, MARCH 5, 1831.

Motion for an injunction to prevent the execution of certain acts of the legislature of the state of Georgia, in the territory of the Cherokee nation of Indians, on behalf of the Cherokee nation; they claiming to proceed in the supreme court of the United States as a foreign state against the State of Georgia; under the provision of the constitution of the United States, which gives to the court jurisdiction in controversies in which a state of the United States and the citizens thereof, and a foreign state, citizens, or subjects thereof, are parties.

Mr. SERGEANT, in support of the motion for the injunction, after recapitulating the principal heads of the bill, said, that in the brief exposition to be presented of the case of the complainants, he should confine himself strictly and entirely to the judicial aspect of the question, avoiding all political considerations, and every topic which did not conduce directly to a legal conclusion. That he would endeavour still further to simplify the matter, by confining himself, as far as possible, to the very party before the court, the Cherokee nation: without wandering into the discussion of questions about Indians in general, their condition and rights, which must necessarily be vague and indefinite. Each case must at last depend, a few general principles being first settled, upon its own particular circumstances.

With this view, and within these limits, he would consider, and endeavour to establish the following propositions.

1. That the parties before the court were such as, under the constitution, to give to this court original jurisdiction of the complaint made by the one against the other.

2. That such a *case* or *controversy*, of a judicial nature, was presented by the bill, as to warrant and require the interposition of the authority of the court.

3. That the facts stated by the complainants, exhibited such a case in equity, as to entitle them to the specific remedy by injunction prayed for in the bill.

In the present stage of the inquiry, and for the purpose of this motion, the statement in the bill was to be received as true. The points before mentioned, therefore, being made out, there could be no doubt of the right of the complainants to an injunction against the state of Georgia, to issue immediately, and to continue until the coming in of an answer sufficient to dissolve it; or until it should be merged in the general injunction upon a decree in the cause. These points he would now proceed to consider.

1. The power relied upon is contained in the second section of the third article of the constitution of the United States, limited afterwards by the eleventh amendment. "Section 2. The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, *and treaties made, or which shall be made under their authority, &c.* to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens or subjects." "In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have



appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make."

The first of these clauses specifies by classification, the cases to which the judicial power of the United States shall extend, comprehending such as from the nature of the subject matter, or from the character of the parties, were proper for that jurisdiction. The second distributes the authority given by the first, among the courts of the union, assigning to cases of national jurisdiction their appropriate forum. It is subordinate to, and in execution of the former.

There can be no doubt, that under this article all cases "arising under treaties" are cases cognizable by the judiciary of the United States. They are within the very words of the article. The reason for including them is obvious, and entirely conclusive. Treaties are declared to be "The supreme law of the land." Article 6, section 2. They are placed, in this respect, upon the same footing with the constitution of the United States and acts of congress. As acts of national law, it was equally essential that the national power should be adequate to their construction and their execution, by its own exertion, without dependence upon any other authority, and with that uniformity which could only be secured by a supreme judicial tribunal. As acts of *national faith*, binding upon the honour, and involving the relations and peace of the whole nation, they had even a stronger claim to the cognizance of the national judiciary. That they are entitled to it, in some of the courts of the union, is not to be denied or disputed. The jurisdiction of this court, in its original or its appellate exercise, as certainly extends to them under the constitution.

The original jurisdiction of the supreme court, so far as concerns the present question, depends upon the fact

that a *state*, that is, a state of this union, is a party. It matters not who may be the other party. The dignity of a *state* entitles the case in which it is a party, to the jurisdiction of the highest tribunal. *Chisholm's Ex. vs. State of Georgia*, 2 Dall. 419. *State of Georgia vs. Brailsford*, 2 Dall. 402, 415.

The eleventh amendment of the constitution does not operate, in terms, upon the original jurisdiction: but upon the judicial power of the United States, in certain cases. "The judicial power of the United States shall not be construed to extend to any case in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state. Its operation upon the original jurisdiction of the supreme court is only consequential, by excluding altogether from the cognizance of the federal judiciary, certain cases assigned to it by the first clause of the original article, and which in the distribution of the second clause had been made subjects of that original jurisdiction.

This amendment operates by way of limitation or exception. It applies only to the excepted cases, leaving the jurisdiction and the power, in all other cases, exactly as they stood under the original article. What are the cases specified as exceptions? They are very plainly and distinctly defined, suits against any one of the United States "by citizens of another state, or by citizens or subjects of any foreign state." With this exception, which is too plainly expressed to admit of doubt or construction, the whole of the third article remains in full force, and the jurisdictions created by it, as to their extent and distribution, are unaltered. The original jurisdiction of this court, therefore, still exists, wherever it existed before, unless it be in the case of a suit commenced against a state of the union "by citizens of another state, or by citizens

or subjects of a foreign state." It is in full force where a "foreign state" is one party, and a "state" of this union is the other party, or where two states are parties. *Cohens vs. Virginia*, 6 Wheat. 264.

It has sometimes been intimated that the Cherokees are neither citizens of any "state," nor "citizens or subjects of any foreign state." Supposing for a moment that this imperfect view were correct, what would be the legal, or rather the constitutional result of it? The limitation or exception would not apply to them; and (a state being a party) they would have a right to sue in this court, unless, indeed, it were further alleged that they were some how put out of the protection of the law, and incapacitated to sue at all, which, it is believed, has never been suggested. The matter would stand thus: the case arises under a treaty, and is therefore cognizable by the courts of the union. A "state" is a party. The jurisdiction, then, among the courts of the union, belongs to the supreme court, being given to that tribunal by the constitution as originally made, and not taken away by the amendment. Such would be the result of that argument.

That question, it was admitted, did not arise here; and it was adverted to, only for the light thrown by it upon the case that was under discussion. The amendment, it was known from its history, was intended to prevent suits against "states" by individuals. *Cohens vs. Virginia*, 6 Wheaton, 406, 407. The description was meant to embrace all individuals who might sue. How are they described? By a classification understood to embrace them all; "citizens of another state" (of the union) "or citizens or subjects of any *foreign state*": clearly showing that all who were not citizens of a state, must be in the meaning of the constitution, citizens or subjects of a *foreign state*.

The Cherokees, in this case, approach the court, not individually, but in their aggregate capacity, as "the Cherokee nation of Indians, a foreign state." The proposition asserted on their behalf is, that they are "a foreign state," with all the rights and attributes predicated of them in their bill of complaint.

In what manner is this inquiry to be *judicially* pursued? What lights are to be followed? What constitutes the *judicial* evidence of the existence of a foreign state, as such? Fortunately, we are furnished with an answer to these questions by settled and authoritative decisions, of this, the highest tribunal in the land. As to new states arising in the revolutions of the world, it is the exclusive right of governments to acknowledge them; and until such recognition by our own government, or by the government of the empire to which such new state previously belonged, courts of justice are bound to consider the ancient state of things as remaining unchanged. *Rose vs. Himeley*, 4 Cranch, 292. *Gelston vs. Hoyt*, 3 Wheat. 324. *United States vs. Palmer*, 3 Wheat. 634. *Divina Pastora*, 4 Wheat. 63, and note to 65.

In matters of judgment, the ancient state, whatever it was, continues, until it is changed by a competent authority: and of that ancient state, of the changes, if any, it has undergone, the time of those changes, or its continuance to the present time, the acts of our government are authentic and decisive evidence.

Of these acts, establishing judicially the existence and character of other states and nations, the most unequivocal and conclusive must be a treaty. It is the act of the nation; in its nature, deliberate and solemn; in its obligation, most sacred; and, besides its efficacy as a national compact binding the national faith and honour, it is made obligatory upon individuals, upon authorities and upon tribunals, by the constitutional declaration that it is "the supreme law of the land."

This principle being settled, as it must certainly be conceded to be, how does it apply to the present inquiry?

From the beginning of the existence of the United States as a nation to the present time, there have been no less than fourteen public treaties made with the Cherokee nation of Indians; one under the articles of confederation, and thirteen under the constitution; all of them with the solemnities that belong to public national compacts made between independent states or nations.

The first of these treaties was made as long ago as the year 1785; and the last as recently as the year 1819.

These treaties are at the present moment in full force; and on the face of them they bear, that on the one side they are made by the United States, on the other, by the *Cherokee* nation.

In inquiring, judicially, into the fact, the first remark that presents itself is, that the aggregate existence of the Cherokees, with capacity to enter into binding *national* compacts, is *ipso facto* admitted. How can this be, if they are not a nation or state? They act by public agents, few in number, representing the aggregate or community, and binding all the individuals of which that community is composed, in the same manner as the public agents of the United States, on the other side, contract for the whole people of the United States. How could this be, if there were not such a community or state?

But it is not by the inference only (irresistible as it is) that the fact is established. It is asserted in terms in every treaty, from the first to the last. The treaty of the 28th November 1785 expressly styles them a "nation." Sect. 6. In the succeeding treaties, the same description is applied in almost every line, as any one who will be at the trouble to examine them will perceive. See particularly the preamble of the treaty of Holston, Art. 1, and the treaty of Washington in 1819.

The subjects, too, of these treaties are unequivocally of national character and concernment: war; peace; exchange of prisoners; national limits; mutual rights, which nations only could claim or enjoy; and mutual duties, which nations only could fulfil.

The obligations are national; the sanctions are national; the breach is national; and the impress of national character, as belonging to the Cherokee Indians, is thus deeply and inseparably fixed upon the treaties in every variety of way, and with them transferred to our statute book as a part of the "supreme law of the land." Whatever others may say, so long as these treaties remain in force, the Cherokee Indians are, by our laws, a state or nation.

It was not now a question, what the United States might heretofore have done, or what they may do hereafter. That belonged properly to another head of inquiry. The present purpose was only to inquire *judicially* into the fact as now existing, according to the established principle already stated.

Following the rule of interpretation, or rather, of evidence thus established, were not the Cherokee Indians a "*foreign state*," within the meaning of the constitution? It would be sufficient to answer, that they certainly are not a state of this union. What then can they be but a foreign state? The constitution knows of but two descriptions of states, domestic and foreign. Those which are not included in the former class must necessarily fall into the latter. Nothing can be clearer than this; following either the language or the meaning of the constitution. There is no third description in that instrument; and there is no case of a *state*, which was not intended to be within the scope of its judicial authority, whenever circumstances might make it a duty to ourselves or to others to interpose its exercise. It is true that the Cherokee nation have no part or right in the constitution of the United States, because they are a

*foreign* state, and that constitution is the compact only of the states and citizens of this union. But there is a power given by the constitution which they may invoke when they have a demand of justice; a power conferred upon the authorities of the union, and in its nature conclusive. What reason can be given why it should not equally extend to them as to all other states.

The constitution itself created no new state of things. It operated upon a state then existing, and of very long standing. From the first settlement of the country by Europeans, the Cherokees existed as an independent nation. They never became *incorporated* with the European settlers, nor *subjected* by them. It is only by one of these modes, or by utter extinction, that they could cease to exist as a nation. Such as they were at the first, such they have continued to be, and such they now are. If any change has ever taken place in their condition, and especially one so material as to destroy their independent national character, it is for those who assert it to show when, and how, this great change was effected. The *history* of the case is in this respect the *law* of the case. In what part of their history is it to be found? The European claim of discovery never asserted their subjection or extinguishment as its consequence. It asserted nothing in respect to them. It only fixed the limits of the pretensions of different European states or sovereigns between themselves: each maintaining an exclusive right to what he had discovered, and within his discovery to deal with the natives according to his own will, without interference by the others. The conduct of one was no rule or law to his neighbour, except as it evidenced the common consent to abstain from interference. Each was the absolute master of his own conduct, and made the law for himself within his own limits. If he had strength enough to do so, he made the law for the native inhabitants

according to his own will and pleasure, with more deference to the suggestions of his own passions and appetites than to the dictates of justice or of mercy. In some portions of the discovered hemisphere they were hunted with blood hounds and exterminated. Whole races of men have long since disappeared from the face of the earth which they occupied. In others, their soil was forcibly seized by the invaders, and the native inhabitants became the slaves of their conquerors. Where these things happened, nations, of course, ceased to exist. Such was, then, the stern policy of the discoverer. But that is not our case.

He would not enter now into a discussion of the abstract question of right as it stood between the European discoverers and the native inhabitants, nor attempt to set up here, on behalf of the latter, rights which (however they might have stood upon original grounds) were now to be no otherwise considered in a judicial tribunal, than as they had been settled by a long course of time and practice, and by judicial decisions, including a decision of this court, to which he should hereafter refer. He was satisfied to take the matter as he found it; to disturb nothing that was past or settled, but to inquire simply into the fact, as it was when the constitution was made, and as it still is.

With this view he proceeded to state, that the claim of Great Britain never asserted the incorporation or subjection of the native inhabitants within her discovery, nor the extinguishment of their national existence and character. It was always a limited claim, and left to them all beyond its limits. See *Johnson vs. M'Intosh*, 8 Wheat. 543. With the exception of this limited claim, and what has since been yielded by treaty, the Cherokee nation of Indians is the same nation now, that it was when the soil of their country was first pressed by the foot of an European. They occupy this moment a portion of the very territory



which then acknowledged their authority. Successive revolutions have changed the parties on the other side; but each in succession has claimed the rights and acknowledged the obligations of its predecessors. The acknowledgment has never been questioned of their existence as an independent *foreign* state; on the contrary, it has been continually, habitually, and uninterruptedly repeated and confirmed, so that from the beginning to the present day there is one uniform current of authentic testimony, without the slightest semblance of contradiction.

Thus, the constitution of the United States found the Cherokee nation at its establishment—a state, not of the union, and yet a state. What could it be but a *foreign* state?

It is not necessary, for the present purpose, to go back to the numberless treaties made with the Cherokees before the revolution. By whomsoever made, they were uniform in their admission, express and implied. History, too, is uniform, in attesting their existence as a foreign state, composed of foreigners, owing no allegiance to the crown of England, to the colony, to the state, or to the union.

When the confederation of these states was formed, where was this subject arranged? Among the *foreign* subjects which were of national concern, and to be dealt with and managed by the national power. There could have been no doubt; for if there had been, that jealousy which yielded nothing but to the most evident necessity, and even withheld much which a short experience proved to be indispensable; would not have conceded this. But it was conceded. Congress had the power of “entering into treaties and alliances.”

They had the power also of “regulating the trade and managing all the affairs of the Indians.” Under these powers the treaty of Hopewell was made in the year 1785,

between the United States on the one side and the Cherokee Indians on the other, and mutual faith was solemnly pledged between parties admitted to be competent to contract as nations.

This was the state of things when the constitution of the United States was formed to establish a more perfect union. Can any thing be stronger to fix the construction of that instrument upon the point in question? A treaty with the Cherokee Indians, made under the authority of congress, within two years only from the time when the convention completed its labours, was already in the statute book, and was one of the treaties "made" which that constitution declared should be the "supreme law of the land," attesting the existence of the nation, as a foreign state, and its competency in that capacity, though within the limits of a state or states of this union, to contract with the United States. Besides its other sanctions—sufficient if public faith be regarded—this treaty has the sanction, in a peculiar manner, of the constitution itself.

Nor had this state of things arisen from haste and inconsiderateness, or the want of due deliberation. Even before the confederation was formed, congress had assumed and exercised authority over this subject, as one which naturally belonged to them. (Journals of 13th July, and 16th December, 1775: January 27th, March 8th, April 10th, 29th, May 27th, June 11th, 1776; August 19th, September 19th, December 7th, 1776.) In the last mentioned year (1776) they made war upon the Cherokees for committing hostilities on South Carolina. (Journals, December, 2d, 1777.) They distinctly asserted the power of war and peace towards the Indians, and denied it to the States. (Journals, 5th March 1779.) In 1781 they sanctioned a negotiation for peace with the Cherokees. (Journals, 1st November, 1781.) From this negotiation, proceeded the treaty of Hopewell (1785),

the provisions of which are set out in the bill. In 1788, congress by proclamation, declared their determination to protect the Cherokees, and if necessary to use force for that purpose. (Journals, 1st September, 1768.) In 1787 the attention of congress had been forcibly and particularly drawn to the subject of their own power. The states of Georgia and North Carolina had raised a question about the construction of the articles of confederation (which were not in this respect altogether free from obscurity); and Georgia had actually proceeded to treat with the Creeks. The matter was referred to a committee, consisting of a member from Massachusetts, New York, Pennsylvania, Delaware and Virginia. They made a report (12 Journals, 82) on the 3d August, 1787; in which the question was fully examined, and the power of congress asserted and maintained. The clause in the articles of confederation, upon which the doubt had been raised, was as follows, "congress shall have the sole and exclusive right and power of regulating the trade and managing all affairs of the Indians, not members of any of the states; *provided that the legislative right of any State within its own limits be not infringed or violated.*" Upon this proviso, the pretensions of the states were founded. Whatever may have been the merits of this controversy, it was for ever ended by the constitution of the United States, which omitted the limitations in the articles of confederation, and gave the power to congress unfettered, and (to use the language of the report before mentioned) "indivisible." That this was purposely and deliberately done, we have the authority of Mr. Madison in the Federalist, No. 42. So that by the constitution of the United States, all Indian nations, within or without the limits of states, are put upon one footing,—that asserted by the report of the committee of congress. No state has any power over

them ; it would be inconsistent with the power of congress.

In what light, then, must this constitution be considered as regarding the Indian nations ? After the reference which has just been made, the answer is plain and unavoidable. In adopting, without exception, treaties previously made, it adopted the treaty of Hopewell, which was one of them, and immediately in view. In conferring upon the president and senate the treaty-making power, it gave to them the powers which had been exercised by congress under the same terms in the articles of confederation, including that of making treaties with the Indians. In giving to congress the power to regulate trade with the Indians, it gave to them all the power which had been exercised by congress before, freed from the embarrassment of the obscure proviso which had caused some question, and therefore, if not enlarged, at least rendered more firm and indisputable. It plainly, purposely, and unequivocally assigned to the federal jurisdiction, in its different departments, the whole subject of the Indian nations, as one which belonged exclusively to the union, and not to the states ; employing for this object, in substance, the clauses in the articles of confederation which had been found efficacious before, and rejecting only such as had been the occasion of doubt or embarrassment. As to the nations themselves, it regarded them as they had been regarded before, as states, not of this union, and therefore *foreign*, and capable of making treaties with the United States. Whoever will examine the report before adverted to, will be fully satisfied that these were the views of the public men of that day, and that they were entertained upon the strongest and the soundest reasons. Occurrences of the present day give to them additional strength.

Under the constitution, the subject again received a deliberate, and peculiarly solemn examination; chiefly as to the expediency of the mode of proceeding; for the power was not questioned. In the year 1790 (August 11), President Washington sent to the senate a message in relation to the Cherokee Indians, which concluded with asking the advice of the senate upon three questions. The first of them was whether overtures should be made for arranging a *new boundary* by treaty with the Cherokees. The second related to the mode of compensating them for the land they might cede. The third was as follows: "shall the United States *stipulate solemnly* to guaranty the new boundary which may be arranged?" The senate resolved to advise and consent that the president should at his discretion cause the treaty of Hopewell to be carried into execution, according to the terms thereof, or enter into arrangements for a new boundary, compensating the Cherokees for the lands they might cede. In answer to the third inquiry, the senate came to the following resolution. "Resolved, in case a new or other boundary than that stipulated by the treaty of Hopewell shall be concluded with the Cherokee Indians, that the senate do advise and consent solemnly to guaranty the same." Under this deliberate expression of the advice and consent of the senate, the treaty of Holston was made on the 2d July, 1791; and was duly submitted to and approved by the senate. It is still in full force, as a treaty between the United States on the one part and the Cherokee nation of Indians on the other; with the solemn guarantee on the part of the United States which the senate had advised. Eleven treaties have since been made, the last of them in the year 1819, adopting and continuing the same guarantee. As to the state and condition of the Cherokees, they are all of them perfectly clear, and especially the treaties of 1817 and 1819.

The existence of the Cherokee nation of Indians, as a state, and a *foreign* state, is thus brought down to the present moment. The evidence of the public acts of the United States is conclusive. It is impossible to question the authority to make these treaties. The constitution plainly intended to give the power to make them. This is no constructive power, implied from doubtful clauses, or inferred from other powers or from general words. The very case was within the view of the statesmen who framed that instrument. They adopted the provisions in the articles of confederation which had confessedly given the power, and omitted the one which had thrown a doubt upon it, for the very purpose of cutting off all dispute or question. It is not, therefore, a construction supported merely, or even principally, by a practice of forty years without question; though such a practice, concurred in by all the departments of the government, must even be deemed a venerable authority. The history of the constitution, the language of the constitution interpreted by its history, the known intention of those who framed it; fully justify the assertion, that this power could never, at any period, have been questioned, without doing flagrant violence to the known and manifest meaning of that instrument. There is not a power of the federal government more certainly conferred than this.

These, then, are treaties made in pursuance of the constitution. They are in full force. They stand in the statute book, with all the sanctions of treaties with foreign states; and we are in the possession and enjoyment of the benefits derived from them. Can we under these circumstances deny that which they necessarily import? Can we, consistently with any right rule of interpretation, or with the common obligations of good faith, call in question the character of the party, announced and admitted upon the face of the instrument itself, especially

when by so doing we impair or take away from him the stipulated advantages of his compact. If it were morally or politically admissible, is it *judicially* possible, while the government acknowledges, as it continues to do, the existence and binding obligation of these treaties? Can any court deny to them their natural construction?

The articles of agreement and cession between the United States and the state of Georgia, of the 24th of April 1802, are equally conclusive upon the point in question, by the concession of Georgia herself. The United States stipulate to extinguish the Indian title to lands within the state of Georgia, for the use of Georgia, "as soon as the same can be peaceably obtained upon reasonable terms." There is an admission here that there was an Indian title; that it could only be extinguished with the consent of the Indian nation; and that the United States alone had the power to extinguish it, because the United States alone had the power to make treaties with the Indians. The act of congress of 30th of March, 1802, commonly called the Indian Intercourse act, speaks the same language in all its provisions. That act was made in fulfillment of the obligations of justice contracted by treaties. It was nothing more than had been solemnly guarantied. The United States were bound to make such laws, and they are bound to execute them: a failure in either would be a violation of the national faith so clearly pledged. They are bound to respect the Indian boundaries and rights themselves—they are bound to protect them from encroachments by states, or by citizens of the United States; because they have en-

\* The act of the last session expressly declares, in a proviso, that they are not to be impaired or questioned.

gaged to do so, and have received the equivalent for their engagement.

Judicial decisions, in accordance with this view, are not wanting. In *Johnson vs. M'Intosh*, 8 Wheat. 543, the Chief Justice, in delivering the opinion of this court, assumes the existence of the Indian nations as *states*, by ascribing to them powers, and capacities and rights, which belong only to that character. In page 592, is the following passage. "Another view has been taken of this question, which deserves to be considered. The title of the crown, whatever it might be, could be acquired only by a conveyance from the crown. If an individual, might extinguish the Indian title for his own benefit, or, in other words, might purchase it, still he could acquire only that title. Admitting their power to change their laws and usages, so far as to allow an individual to separate a portion of their lands from the common stock, and hold it in severalty, *still it is a part of their territory, and is held under them by a title dependent on their laws. The grant derives its efficacy from their will: and, if they choose to resume it, and make a different disposition of the land, the courts of the United States cannot interpose for the protection of the title. The person who purchases lands from the Indians within their territory, incorporates himself with them, so far as respects the property purchased; holds his title under their protection, and subject to their laws. If they annul the grant, we know of no tribunal which can revise and set aside the proceeding.*" Their sovereign power within their own territory; their authority to make, to administer, and to execute their own laws; to give titles and to resume them, to do, in short, what states or nations only can do; are here distinctly admitted.

In *Goodell vs. Jackson*, in the court of errors in New York, the question was discussed as to the character of



the individuals composing the Indian nations. They were decided to be *aliens*. If the subjects of a state be aliens, the state itself must be an *alien state*, a *foreign state*.

In *Holland vs. Pack*, Peck's Reports, 151, the very question was directly presented and directly decided by the court of appeals of Tennessee in the year 1823. It was an action brought against a Cherokee innkeeper, residing in that part of the nation which lies within the limits of the state of Tennessee, for the loss of the goods of a guest. The question presented by the pleadings was, by what law the case was to be governed, the law of Tennessee or the law of the Cherokees. The court decided that the latter was to govern. In the opinion, which is full and elaborate, the whole subject is examined; and the conclusion pronounced by the court is, that the Cherokees are an independent nation, with the exclusive power of legislation within their own territory.

This point, of the national character of the Cherokee Indians, is put to rest by two of the treaties, in terms which admit neither of doubt or controversy. The treaty of the 8th July, 1817 (Art. 8) makes a provision for securing certain reserves of land to those of the Cherokees *who might choose to become citizens of the United States*. This provision is referred to and adopted by the treaty of 1819, article 2. It is too obvious to require a remark, that this stipulation necessarily characterises them as *aliens*, then in a state of alienage, or of allegiance to a *foreign state*, but capable of becoming citizens of the United States at their own election, and until that election should so incline them, of remaining in the condition in which they then were. How were they to become citizens? It could only be upon the terms prescribed by the naturalization laws of the United States, of renouncing their foreign allegiance. How could they renounce it if none such existed? It may not be amiss to add, that this

provision applied to individuals and to reserves of land within the limits of states of this union. A list of them is appended to the treaty of 1819, with a description of their locality. It will be there found that the greater part of them were within the limits of the states.

This review, upon the principles heretofore adopted in judgment, would seem to be sufficient of itself for a court sitting under the constitution and laws of the United States. But wherever the inquiry may be pursued the result will be the same. The Cherokee nation is a state. It has "its affairs and interests; it deliberates and takes resolutions in common; and becomes a moral person, having an understanding and a will, peculiar to itself; and is susceptible of obligations and laws." This is the very definition of a *state*, according to the most approved writers on public law. Grotius, b. 1, c. 1, §. 14. B. 3, c. 3, §. 2. Burlamaqui, vol. 2, p. 1, c. 4, §. 9. Vattel, b. 1, c. 1. It is a *foreign* state, for it is not a state of this union. It is no part of our body politic. The Cherokees have no influence in our affairs, and no control over our conduct; and we have none in theirs, save what is given by treaty, and that is by mutual stipulation between the entire bodies politic, in their aggregate capacity, as equal contracting parties.

It is no objection to this that they are inferior or dependent allies. A state is still a state, though it may not be of the highest grade, or even though it may have surrendered some of the powers of sovereignty (Vattel, b. 1, c. 1, § 5 and 6): as a man is still a man, though mutilated and deprived of some of his limbs. Such an argument, indeed, is destitute of all colour of support, for it supposes that by entering into a treaty the very rights are given up which are reserved by the treaty. This is an absurdity.

Is there in the constitution of the United States

any thing to limit or alter this natural and unavoidable construction as applied to the question of jurisdiction? In other words, is it true that though "foreign states" to other intents, they are not "foreign states" within the terms of the provision for the judiciary?

The only conceivable suggestion to the contrary, if any there be, must be derived from the third clause of the eighth section of the first article. Congress shall have power, it is there said, "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." The argument may be, that what are here called "Indian tribes" are specified, because they are not comprehended in the words "foreign nations;" and therefore can not be considered as embraced by the words "foreign states," in the third article of the constitution. This, it will be observed, is a mere verbal criticism, which, if allowed to prove any thing, would prove far to much. The provisions are framed for different purposes and with different views, and are found in different parts of the constitution. The one relates to the legislature, the other to the judiciary. There is no incompatibility between them, nor is there any difficulty at all in letting them stand together, inasmuch as they do not belong to the same subject.

In what sense is the word "tribes" to be considered as here used? Its original and most appropriate meaning is a subdivision of a state, nation or community, forming a constituent part of it, but set apart or distinguished for the more convenient management of its affairs. Thus, Rome was divided into "tribes," in the first instance three, and finally thirty-five. Athens was divided into ten tribes. There were the twelve tribes of Israel, forming together one nation, under one head, until the revolt of the ten tribes, when they became two nations, and so continued until the ten were lost. The

constitution cannot have used the word in this sense. We know of no such subdivisions within the Indian nations; and if there had been, no one will suppose that the power given to congress was only to deal with portions of the nations. Sometimes, it is true, this word is applied to wandering hordes, who have no territory; no fixed residence, and no organic structure. But this could not be affirmed of the Cherokee nation. They had a territory; they had fixed boundaries; they had laws and government; they were already parties to a treaty with the United States, and in that treaty were expressly denominated a "nation." Whatever might have been the habits of individuals, the nation had a local habitation, and sufficient stability to be treated with as an organized community.\* Was it meant to be excluded from the power of congress? This word "tribes" will be found to occur frequently in the journals of the old congress, and especially in the report before referred to, of August 1787; where it is manifestly employed as synonymous or equivalent to "nations." If it be more comprehensive it might be used from greater caution, in order to cover the whole subject; to comprehend tribes, if any such there were, which were not nations. It would not, therefore, exclude those which were nations, but they would be embraced by both the words. So it has been construed in practice.

But if this verbal argument have any weight, we shall be obliged by it to concede that wherever it happens that different words are used, though occurring in different parts of the constitution and on different branches of power, they must necessarily mean a different thing. Then it will follow, that "a foreign state" and "foreign

\* The present principal town of the Cherokee nation will be found mentioned in the earliest records of congress by the name of *Chota*.

nation" are different—that the federal judiciary has no jurisdiction in the case of a "foreign nation," and that congress has no power to regulate commerce with a "foreign state." In the tenth section of the first article, clause second (prohibiting the states from entering into alliances), the words employed are "foreign powers." This, upon the same principle, would exclude "foreign powers" from both the former articles.

The same argument would perhaps take away the treaty-making power with the Indians from the United States. A treaty cannot well be made with those who, according to the constitution, as thus understood, have no capacity to fulfil their engagements, or even to be bound by them.

It would work out a result still more repugnant to what was certainly intended. If the use of the word "tribes" in the first article excludes the application of the words "foreign states" in the third, it must equally exclude the words "foreign powers" in the section just referred to (article first, section tenth, clause second.) What follows? That the states individually are not prohibited from making compacts with the Indians, because they are not "foreign powers." No one, it is believed, would contend for this.

But has it ever been admitted as a sound rule of construction, justly applicable to the constitution, that a specification must necessarily restrain the general words which precede it, and can in no case be considered as merely redundant? There are repeated instances in the same section, where such a rule would be fatal to the sense. See clauses five, ten, thirteen, &c.

It is submitted, however, that the process of verbal criticism is not the correct mode of dealing with a constitution of government, where the grants of power are necessarily made in a few words. It must be inter-

preted in a different way. Some weight must be allowed to the general intention and design of the instrument. The judicial power of the United States was intended to be co-extensive with the legislative and executive, so as to form a government complete, within the range of its powers, in all its departments, and capable of independent existence. *Osborn vs. Bank of the United States*, 9 Wheat. 818.

The treaty-making power confessedly belongs exclusively, to the United States. Treaties thus made are declared to be the supreme law of the land. "Cases arising under treaties" are, therefore in express terms assigned by the article under consideration to the federal judiciary. The subject belongs to the United States tribunals, and not to the tribunals of the states. Of this, there can be no dispute. Why then suppose it to be excluded from the original jurisdiction of this court? A state of the union is a party, and it is the dignity of that party alone which entitles the case from its beginning to the attention of the highest tribunal. The character of the other party is in this respect of no importance. What reason can be assigned for an exclusion so contradictory? Why should the constitution which says expressly that, in all cases where a state is a party, the supreme court shall have original jurisdiction, be made to say by implication, that in this case, where a state is a party, it shall not have original jurisdiction? To what jurisdiction would they be referred. The same argument which took away the alien character of the nation would equally destroy the alien character of the individuals composing it. They certainly are not citizens; and if they be not aliens, what are they? Outlaws. Declared outlaws, without a nation, and without protection. Public law abhors such a state of existence. It is not more essential in municipal arrangements that every thing capable of ownership should have a

legal and determinate owner, than it is in the great society of nations that every man should be bound by some allegiance, should be a member of some community. The Cherokee Indians are willing to be so. They are so. They are more so now than they were at any former period. Guided by our counsels, aided by our efforts (for which we have taken much credit with the world) they have become civilized and enlightened, and attached to the arts of civilized life; and are consolidating their advantages under a form of government instituted at the suggestion of one of our most eminent statesmen.\* The preser-

\* The following is the speech addressed to them by Mr. Jefferson.

My Children, Deputies of the Cherokee Upper Towns.

I have maturely considered the speeches you have delivered me, and will now give you answers to the several matters they contain.

You inform me of your anxious desires to engage in the industrious pursuits of agriculture and civilized life; that finding it impracticable to induce the nation at large to join in this, you wish a line of separation to be established between the Upper and Lower Towns, so as to include all the waters of the Highwassee in your part; and that having thus contracted your society within narrower limits, you propose, within these, to begin the establishment of fixed laws and of regular government. You say that the Lower Towns are satisfied with the division you propose, and on these several matters you ask my advice and aid.

With respect to the line of division between yourselves and the Lower Towns, it must rest on the joint consent of both parties. The one you propose appears moderate, reasonable and well defined; we are willing to recognize those on each side of that line as distinct societies, and if our aid shall be necessary to mark it more plainly than nature has done, you shall have it. I think with you that on this reduced scale, it will be more easy for you to introduce the regular administration of laws.

In proceeding to the establishment of laws, you wish to adopt them from ours, and such only for the present as suit your present condition; chiefly indeed, those for the punishment of crimes and the protection of property. But who is to determine which of our laws suit your condition, and shall be in force with you? All of you being equally free, no one has a right to say what shall be law for the others. Our way is to put these questions to the vote, and to consider that as law for which the majority votes—the fool has as great a right to express his opinion by vote as the wise, because

vation of their character as a state was essential to their happiness and even to their existence; it was essential, too, to enable them to fulfil many of their treaty obligations towards the United States.

In conclusion, upon this point, Mr. Sergeant remarked that he would not be understood to question the power of the United States over the whole matter. He would not

he is equally free, and equally master of himself. But as it would be inconvenient for all your men to meet in one place, would it not be better for every town to do as we do: that is to say, choose by the vote of the majority of the town and of the country people nearer to that than to any other town, one, two, three or more, according to the size of the town, of those whom each voter thinks the wisest and honestest men of their place, and let these meet together and agree which of our laws suit them. But these men know nothing of our laws. How then can they know which to adopt? Let them associate in their council our beloved man living with them, Colonel Meigs, and he will tell them what our law is on any point they desire. He will inform them also of our methods of doing business in our councils, so as to preserve order, and to obtain the vote of every member fairly. This council can make a law for giving to every head of a family a separate parcel of land, which, when he has built upon and improved, it shall belong to him and his descendants for ever, and which the nation itself shall have no right to sell from under his feet. They will determine too, what punishment shall be inflicted for every crime. In our states generally, we punish murder only by death, and all other crimes by solitary confinement in a prison.

But when you shall have adopted laws, who are to execute them? Perhaps it may be best to permit every town and the settlers in its neighbourhood attached to it, to select some of their best men, by a majority of its voters, to be judges in all differences, and to execute the law according to their own judgment. Your council of representatives will decide on this, or such other mode as may best suit you. I suggest these things, my children, for the consideration of the Upper Towns of your nation, to be decided on as they think best, and I sincerely wish you may succeed in your laudable endeavours to save the remains of your nation, by adopting industrious occupations, and a government of regular laws. In this you may rely on the counsel and assistance of the government of the United States. Deliver these words to your people in my name, and assure them of my friendship.

THOMAS JEFFERSON.

JANUARY 9, 1809.



undertake to say what congress might do. But until the power was plainly exercised, to the extent of abrogating the treaties, upon the responsibility which belonged to such a step; those treaties would continue to be the law, and must be respected and executed as such.

2. That a sufficient "case" or "controversy" was presented to call for the exercise of judicial power.

What constituted such a case? "A case in law or equity" is a term well understood, and of limited signification. It is "a controversy between parties which has taken a shape for judicial decision." (Speech of Chief Justice Marshall in the matter of *Nash v. Robbins*, note to *Bee*, 277.) It is defined also in 9 Wheat. 819. "This clause" (1st clause, 2d sect. 3d art. Constitution United States) "enables the judicial department to receive jurisdiction to the full extent of the constitution, laws, and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting upon it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the constitution declares, that the judicial power shall extend to all cases arising under the constitution, laws, and treaties of the United States."

To make such a *case* a *controversy*, there must be, 1. Parties capable of suing and being sued. 2. A subject matter proper for judicial decision.

1. It could not be questioned that *here* were such *parties*. They were within the very words of the constitution. That clause admitted at the same time, that there might be subjects of judicial controversy between such parties; there is, therefore, no presumption from their character against the jurisdiction. It might be, that a question between the United States and a foreign state, arising upon a treaty, could not be a case of judicial cog-

nizance; that it would necessarily be political or diplomatic, and not judicial. But a question with a state could not be of that description, because a state could have no political or diplomatic relations. Const. Art. 1, Sect. 10. It was no more diplomatic than if it were the case of an individual complainant. The questions might be precisely the same. Its being the case of a *state*, defendant, could make no difference, for this court entertained jurisdiction in equity of controversies between states, as in the pending case between New Jersey and New York. As to the parties, there could be no doubt.

2. Was there a subject matter, proper for judicial decision? That must depend upon the nature of the *right* which was asserted, and the nature of the *wrong* which was inflicted or meditated. As to the *rights* of the complainants, as they were here asserted, they might be considered for the present purpose as founded entirely upon the laws of the United States; that is, upon treaties and upon acts of congress, which were of equal authority. These rights were judicially known to the court as part and parcel of the laws of the United States. It was not necessary to go out of those laws for the purpose of investigating them. They were not obliged now to explore the original grounds of right, nor to question the European principle of discovery. Such as they appeared upon the statute book the complainants were willing to consider them; and they asked nothing more than to have them enforced as they there appeared.

Of these rights the Cherokees were in actual possession; with the knowledge and acquiescence of all the authorities of the United States. There was no dispute between them. Their claim was only to be protected from disturbance or interference with their established rights; and they claimed it against those who were subject to the authority of the laws of the United States and within

their jurisdiction, but did not profess to derive any sanction for their conduct from the United States.

These rights, it was further to be remarked, were such, that in a suit between the citizens of the United States, they would undoubtedly be within the jurisdiction of the laws of the United States. What are they? The treaty of July 1817 (art. 5) continued in force all former treaties. The treaty of February 1819, was only a final adjustment of the former. All the guarantees of former treaties are therefore in full force.

1. The first of the rights admitted, and professed to be guaranteed and secured to them, was the right, *within their own boundary*, of self government. Their political power is abridged by their own concessions, and so is their right of property by conditions annexed to it. But the right to regulate their own *civil* condition within their own limits, to make and to execute their own laws, is exclusive and absolute. It is extended expressly by treaty, as well as by the intercourse act, to persons going amongst them. This is the plain import of all the treaties, as well as of the intercourse act. In the treaties, means are employed for civilizing them, but they are proposed in the way of advice and assistance, and not in the way of authority or command. See particularly Art. 14, treaty of 1791; Art. 2, treaty of 1806; preamble of treaty of 1817, and Art. 8 of same.

2. The next was the right of property, modified, but still exclusive and absolute against all interference. The *mode* of enjoying it was left to themselves. Whatever it might be, it resolved itself into individual enjoyment as to its end and purpose. As against the United States and their citizens, this right was sacred and incontestible. It was acknowledged in every variety of way. The boundaries were fixed by treaty, and what was within them was acknowledged to be the land of the Cherokees. This was the *scope* of all the treaties. Treaty of Hopewell,

Art. 4. Treaty of Holston, Art. 7, &c. The United States would not even assume the right of passage without their consent, and when it was granted, it was by treaty in a limited way, by a particular road. Treaty of Holston, Art. 5. Treaty of 1795, Art. 7. They stipulate against intrusions, abandoning intruders to the laws and tribunals of the Cherokees. Treaty of Hopewell, Art. 5. Treaty of Holston, Art. 8. They stipulate also for protection. Treaty of 1798, Art 4.

It was unnecessary for this purpose to go more fully into those treaties. They spoke one language throughout, and that was, that the Cherokees were entitled to the occupation and enjoyment of their land without intrusion or interference. The same language was spoken by the intercourse act. Indeed, he might add, that as yet, it was not disputed by any act or declaration of the United States through any official organ authorized to do or to speak on the subject. These rights were absolutely unquestioned, and the obligation to protect them was in full force. The United States had never by any competent authority disclaimed it. They do not disclaim it now. The solemn guarantee advised by the senate in 1790, and given by the executive, with the advice of the senate, in the year 1791, is as fresh in its claim upon the public faith as the day when the treaty was signed. It is true that the stipulated protection is not afforded; but the congress of the United States have never denied the right to claim, or the obligation to afford it.

### 3. What are the wrongs they complain of?

The violation of these *rights*, to the extent of their total *destruction* and *extinction*. The legislation of Georgia proposes to annihilate them, as its very end and aim; the acts already done under it are in furtherance of that purpose, and those which are further menaced will be its consummation. The laws of Georgia profess no other ob-

ject; they are effectually conceived for this. If those laws be fully executed, there will be no Cherokee boundary, no Cherokee nation, no Cherokee lands, no Cherokee treaties, no laws of the United States in the case. They will all be swept out of existence together, leaving nothing but the monuments in our history of the enormous injustice that has been practised towards a friendly nation.

These laws of Georgia operate upon the individual Cherokees as well as upon the nation. They are virtually made outlaws, neither citizens nor aliens, nor competent to be witnesses in courts of justice. They operate also upon their property, and upon the rights and privileges declared for them by the laws of the United States.

Is not this, then, a *case* or controversy of *judicial* cognizance? The bill sets forth a number of individual instances of the exercise of the unjust authority. Would they not, upon the complaint of individuals, be the subject of judicial cognizance? Would not the questions to be presented, discussed, and decided, be precisely as they now are? As questions of property, as personal privileges, or as corporate privileges, they are matters of judgment purely and strictly, without any admixture whatever of political or diplomatic considerations, and they have become a *case*, or subject of a suit, by the actual perpetration of injury and the menace of its repetition. They are questions upon the laws of the United States, in suits against citizens of the United States; and if it be necessary still further to examine the ground of complaint, it will be found that it is one of every day judicial cognizance, namely, that the laws of Georgia are unconstitutional and void.

Is not the character of the aggregate the same as that of the particulars of which it is composed? Is there any thing in the process of aggregation to alter it? The constitution of the United States gives no colour to

such a distinction. It applies the same description of case or controversy to bodies and to individuals. Judicial decisions gives it no countenance, but the contrary. Jurisdiction is entertained of suits between states, as in the instance now pending. In the case between states, there must always be individual interests involved with those of the state. Jurisdiction is entertained of suits by corporate bodies. *Osborn vs. Bank of the United States*, 9 Wheaton, 739.

To what forum (of those belonging to the United States) the resort is to be had, depends upon the parties. The federal jurisdiction depends upon the nature of the case or question. If that be such, that it might be here by an individual, under the twenty-fifth section of the judiciary act, by appeal; it may be brought here originally by a state.

It might be that, in fact, the present was the only mode in which the protection of the United States judiciary could be obtained, or in which it could be called upon to vindicate the majesty of the laws and treaties. The nature of the Cherokee institutions and polity, as to the tenure of land, presented a difficulty on the one side. The determination of the authorities and tribunals of the state of Georgia not to permit a suit to reach a stage where a writ of error could be made available, was at present an insuperable difficulty on the other. If redress could not be afforded in the mode now proposed, they might all, like Tassels, suffer final and irreparable infliction while waiting for the time of hearing before this court.

The complainants, then, come here upon the ground of the violation of a legal right, and *that*, he submitted, was a case or controversy. They do not present an abstract question. They do not present a political question. They do not come to demand in general terms the fulfilment of a treaty, nor to ask this court

to enforce the execution of an active article. They do not come to claim any thing adversely to the United States, nor to ask this court to settle questions between the high contracting parties. They ask for redress and protection against wrong-doers in the accustomed legal way, and they vouch the treaties as the evidence of their rights.

4. Is such a case presented by the bill as entitles the complainants to the specific remedy of injunction. For the purpose of this inquiry, in its present stage, all the averments of the bill are to be taken to be true.

An injunction is the process of equity to restrain, where restraint is necessary, to prevent irreparable mischief; for which there is no adequate redress at law. *Eden on Injunctions*, 1, 209. It is granted to hold a fund, until a decision can be had of a claim upon it. *State of Georgia vs. Brailsford*, 2 Dallas, 402.

In this court there is a decision directly applicable. An injunction may be issued to restrain a person who is an officer of a state from performing an act enjoined by an unconstitutional law of the state. *Osborne vs. Bank of the United States*, 9 Wheaton, 733. Mr. Sergeant referred particularly to the argument of counsel, 748, and the opinion of the court by the Chief Justice, 838, 9. This case, in the argument and decision, was full to the present purpose, and was an adequate and sufficient authority for the injunction in the present case. The subject of complaint was the same—an unconstitutional law. The object was the same—to restrain its execution. The state of things, calling for relief, was the same, except that here the threatened danger was far greater and more urgent. Here, as there, the property, the franchises, rights and privileges of the complainants were menaced.

Perhaps it might be suggested that the complaint related to matters out of the United States, but within the

Indian nation, and therefore beyond the limits of the jurisdiction of the court. It was not necessary to examine very particularly the foundation in fact of such a suggestion. Among the acts stated, however, it would be remarked, was that of drawing the complainants to tribunals within the United States, to which they were not amenable. But, independently of this, there was a very satisfactory answer. A court of equity does not regard the situation of the subject matter in dispute, but considers only the equities arising from the parties. It has enjoined a party from proceeding in a foreign court. *Eden*, 101, 2, 3. *Wharton vs. May*, 5 Ves. 27. Upon the same point there is a clear authority in this court. In *Massie vs. Watts*, 6 Cranch, 148, it was decided, that a court of equity has jurisdiction, *in personam*, in cases involving trust, contract, or fraud, wherever the person of the defendant is even casually to be found within its jurisdiction; although it may be unable to enforce its decree in rem, the property in controversy being out of its jurisdiction. This was a case involving contract.

He deemed it unnecessary to trouble the court further upon this point.



## SPEECH

ON THE BANKRUPT BILL, DELIVERED IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, TUESDAY, FEBRUARY 17, 1818.

MR. SERGEANT remarked, that, from the course which had been taken by the opponents of the bill, its provisions seemed to be understood as having no object but the relief of debtors, and those of a particular class. One gentleman, indeed, appeared to have a glimpse of a more extended operation, for his objection was that the bill imposed extraordinary liabilities, and conferred peculiar privileges, upon the mercantile part of the community; but it did not seem to have occurred to him, that the imposition of extraordinary liabilities might of itself be an adequate inducement for granting some peculiar privileges. The truth is, that the bill now under consideration, and every well conceived bankrupt law, proposes, chiefly, the security and advantage of the creditor. The ultimate relief afforded to the debtor is only an incident, though an incident, undoubtedly, of great importance, whether it is regarded in its connexion with the public interests, with the demands of justice, or the duties of humanity. The question which presents itself to the consideration of an enlightened legislature, is simply this—if from motives of public policy, you deem it necessary to exercise over a certain description of citizens the summary power of arresting them in their career, upon indications of weakness and approaching failure; of taking their property out of their hands, and distributing it among their creditors, for the satisfaction of their debts, what terms ought you to grant to those over whom you have

exercised this authority? An interesting question it must at all times be, and at the present time it has a peculiar interest from circumstances to which I shall perhaps have occasion to advert hereafter.

My purpose in the first place, is to state very briefly, why the bill is and ought to be confined in its operation to the persons described in the first section, that is to those engaged in trade. And in this I have in view to meet an objection that I find has had a considerable influence upon the minds of members. Why, it is said, why not extend the provisions to all classes of the community? why confine them to a single class? The answer is a very plain one. The design of the Constitution, was to vest in the government of the United States such powers as were necessary for national purposes, and to leave to the States all other powers. Trade, commercial credit, and public or national credit, which is intimately allied to it, were deemed, and rightly deemed, to be national concerns of the highest importance. In the adjustment of our government, at once national and federal, they were intended to be confided, and were confided, to the care of the public authority of the nation. It is too much the fashion everywhere to indulge in general censure of classes or professions. When merchants are the subject of discussion, we hear of speculators, and even worse; when protection is asked for manufactures, we are told that manufacturers are extortioners, and there is often danger that the great interests which are connected with their occupations, may be lost sight of in the prejudice raised against the individuals engaged in them. But, whatever may be said of the merchants, it is nevertheless certain, that trade, *trade carried on by merchants*, and commercial credit, are favourite objects of the Constitution. It is, in fact, to a regard for trade, to the obvious necessity of a system that should be adequate to its protection, its regulation and support, that we are indebted for the Constitution itself, and all the blessings we enjoy or promise

ourselves from that instrument. The commissioners who met at Annapolis in September 1786, delegated by the States of New-York, New-Jersey, Pennsylvania, Delaware, and Virginia, assembled in consequence of a resolution of the State of Virginia, "to take into consideration the trade of the United States; to examine the relative situation and trade of the said states, &c." Their report, grounded upon the suggestion, "that the power of regulating trade is of such comprehensive extent, and will enter so far into the general system of the federal government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a correspondent adjustment of other parts of the federal system," recommended the plan of a convention, with enlarged powers, to prepare such a system. The recommendation was adopted. The convention that formed the Constitution was assembled. This Constitution was the result—and "commerce with foreign nations and among the several states" was one of its chief concerns.

The power to "regulate commerce with foreign nations and among the several states," would have been inadequate to its purpose without the concession to Congress of certain auxiliary powers. They were granted.—Among them, and I advert to it as having the nearest affinity to the power now more immediately under consideration, was the authority to establish a national judiciary, with jurisdiction over controversies between foreigners and citizens, and over those between citizens of different states. What was the view of the convention in giving to the foreigner, and to the citizens of other states in relation to the debtor, a forum such as this? To secure to him, as far as practicable, a fair and impartial administration of justice, to place him above the reach of local feeling and local prejudice, beyond the sphere of those influences that may, by possibility, affect the state tribunals, in contests between their citizens and others. This was the immediate, but what was the ultimate

object? To protect and encourage trade, to support and invigorate commercial credit, by the security offered.

The power "to establish uniform laws on the subject of bankruptcies," is of the same character. For the construction of this power, I do not think it necessary to resort to verbal criticism. It does not appear to me that we need inquire, whether the term "bankruptcy" had a definite meaning, to which we are limited, nor whether we are bound to follow the model of the statutes in England, or any state bankrupt laws that may have existed here before the Constitution was framed. For the present purpose, the general spirit and scope of the Constitution furnish a sufficient guide. The design of that instrument was to occupy national ground, and leave the rest to the states. Who are the persons then, that, in the relation of debtor, stand connected with foreigners and with the citizens of other states? Who are the persons that in the same relation stand connected with domestic and foreign trade, and with the commercial and public credit of the country? The answer will be at once, they are the merchants, the traders, the dealers, by whatever name you may be pleased to call them, whose business it is to buy, and sell, and circulate what is produced at home or imported from abroad. Other persons may contract the same relation, but it is occasionally and by accident only. These (merchants or traders I mean) do so habitually, constantly, and in the regular course of their business. Again, in what other class of citizens has the nation the same sort of interest? I wish not to be misunderstood. The nation has an interest in the prosperity of all her citizens, and of every branch of industry. Agriculture, the essential basis of national strength and wealth, deserves to be cherished and supported.—For manufactures, every day becoming more and more interesting to this country, I trust that much will be done to afford protection and support. I declare myself willing to go as far in measures to support and protect them, as may be necessary—a declara-

tion which I am willing should be understood either literally or liberally, to give it the most positive meaning. But let it be considered for a moment what is the sort of interest the nation has in the trading part of the community, and it will immediately be seen how important is the power to control them. Take the whole amount of your imports, add to it the whole amount of your exports, and (if any one can estimate the value of it,) of your internal trade for consumption. The great aggregate circulates by means of the trader, and is in his hands. When the farmer or the planter carries his crop to market, he does not become the shipper, and enter into the mystery of invoices, and bills of lading, and policies of insurance: he sells it to the merchant. By the hands of the merchant, too, the government receives its revenue. With such a mass of public and national interest concentrated in the concerns of this class of society; with such a power, in the nature of their occupations, to influence trade, and credit, and revenue, I am satisfied that the controlling power of Congress was intended to reach them. We are on national ground, then, intended by the Constitution to be occupied, in making a bankrupt law for merchants and traders, and others immediately connected with trade. Can we go further? Without undertaking to say we cannot, under any circumstances, I am free to confess that I see no necessity for it, and there are objections of no inconsiderable magnitude. Beyond this limit, none occurs to me as assignable short of an entire comprehension of all descriptions of persons. To say nothing of the impolicy of exerting the summary and sweeping authority of a commission of bankruptcy over farmers, and manufacturers, and mechanics, it would be a plain encroachment upon the rights of the states. Was it intended that Congress should regulate their internal concerns? This is left to the states themselves. Why then should we undertake unnecessarily to interfere? And we should interfere to a most enormous extent, if we should attempt, by any means, to

regulate or to affect the relation of debtor and creditor within the states, upon the comprehensive plan suggested. The argument is, to my mind, decisive, and it brings us back to the ground originally taken, where we may safely stand, assured that we are within the limits of constitutional duty—from which we cannot depart, without the risk of doing what is at once unnecessary and inexpedient, perhaps unconstitutional. The discrimination which is thus indicated by the spirit of the Constitution, and by the theory of our government, is conformable also to the *terms* used by the Constitution. Bankrupt laws, as distinguished from insolvent laws, have a sufficiently appropriate signification, determined by experience and practice. Their most uniform feature, whatever other differences may have existed, has been, that, in their principal operation, they were usually confined to the commercial class; to that class which is most extensively intrusted with the property of others—which is most engaged in hazardous adventure, and whose good or ill fortune, and, if you please, good or ill conduct, have the most extensive influence. I would not, however, be understood as meaning to give any positive limitation, in this respect, to the power. It is possible that circumstances may arise, which would render a more comprehensive description necessary; and then we should be called upon to say whether the Constitution permitted such a construction. At present this is not the case; the broad line is sufficiently marked between the national ground which the national legislature ought to occupy, and those subjects of internal regulation which may be sufficiently provided for by the state legislatures.

It is certainly true, that the merchant or trader may be, and commonly is, indebted to persons residing in the same state with himself; and it is equally true, that the bankrupt law will operate upon debts of this description, as well as upon debts due in other states, and beyond the limits of the United States. The objection, however, has very little

weight. If this operation were an evil, it would be only an incidental one, such as, in a greater or less degree, belongs to every human system. The work of legislation must be at an end, if it can never go on without the perfect assurance that it will produce pure, unmixed good—that it will precisely accomplish its object, without producing any consequences in themselves to be deprecated. I will not stop to illustrate, for every man will find the illustrations lying in every direction about him. But it is not an evil: it is a part of the object of the bankrupt law, and a part of the result contemplated by the Constitution in conferring the power. The Constitution looks to the mass of commercial dealing—to the character of commercial dealing—to the sum of the relations arising from it, and the sum of the effects produced by it—upon trade—upon credit—upon the nation, and upon society. It regards, also, the *entire* mass of commercial dealing, not the individuals engaged, as the object of national concern. Is any other discrimination practicable? Suppose you should attempt to exclude creditors residing within the same state with the debtor, one most unjust consequence would immediately follow. You exclude these creditors from a participation in a bankrupt's estate; that is, you divide it among one set of creditors, to the exclusion of another, not less meritorious. Or, suppose you admit them to participate, but upon different terms, say upon the terms of not being barred by a certificate, this would be a discrimination in their favour, both unjust and impolitic, and tending directly to weaken and undermine the foundations of credit; it would be palpably repugnant not only to the policy, but to the very terms of the Constitution, which give us authority to make *uniform laws* on the subject of bankruptcy.

Still less force is there in that objection which would confine the operation of the law to cases between merchant and merchant, excluding all creditors who are not traders. If the exclusion should be entire; that is to say, if you

were to distribute the estate of the bankrupt only among creditors who are traders, giving no part to the farmer, the manufacturer, the mechanic, or others, it would be unjust. If you give *them* a portion of the estate, without affecting them by the certificate, it is unjust as well as impolitic, for the reason I have before stated. In either case, (and this remark applies to both the objections,) you lose sight of and defeat the very object of the power, which owes its existence in part to the extent and nature of the relations between the merchant and others.

The question which remains for the consideration of the House, is, shall this power now be exercised? I do not mean to contend that, because we find it in the Constitution, therefore we are bound to keep it always in exercise. My honourable friend and colleague (Mr. Hopkinson,) did not say so, and he has been misunderstood by those who have endeavoured to illustrate the extravagance of the position by reference to the power of making war. It is a power to be exercised by Congress in their discretion, with this guide, however, to direct them, that the framers of the Constitution thought it a power fit and proper to be exercised by Congress, and not to be left to the states; they, therefore, supposed it not merely possible, (for a mere possibility would not have afforded a sufficient motive for insertion,) but highly probable that a state of things would exist, rendering an uniform bankrupt system not only convenient, but absolutely necessary. Whatever arguments, therefore, are urged against such a system, simply as such, (and most of the arguments we have heard are of that description,) intended and tending to show that it is at all times, and under all circumstances, an evil; every argument, too, grounded upon the supposed adequacy of state legislation to accomplish the design of the Constitution, is an argument that might, with propriety, have been addressed to those who framed, and to the states when deliberating upon the adoption of that instrument; it is, in truth, an argument



against the Constitution itself, and ought to be applied, not to prevent the passage of a law, but to produce an amendment.

Can a state of things ever be supposed to exist, more imperiously calling upon Congress for their interposition, with a view to the results which the power is to be considered as having been intended to produce? This question will be most satisfactorily answered, by considering, in the first place, for a few moments, the general provisions of the bill, as they relate to the interests of the creditor.

The bill proposes, in the first section, that, upon the proof of certain facts, indicating unequivocally that a merchant's or trader's concerns are in a state of irretrievable embarrassment and disorder, and that he is rapidly approaching to a state of insolvency, or already arrived at it, a creditor may cause a commission of bankruptcy to be issued against him. The effect of the proceeding is, to take out of his hands all the property he may have in his possession, or may be entitled to, and place it in the custody of persons appointed by the law for the purpose of equal distribution among all his creditors, without distinction, in proportion to the amount of their respective debts. Nothing can be fairer or more reasonable than this. The details of the bill, so far as they concern the creditors, are all directed to the object I have stated, to accomplish the honest surrender of property by the debtor, and the equal distribution among his creditors. Is not something of this kind required? Those members who represent commercial districts, are prepared to answer the question from experience; and those who have not had the same means of information, may, notwithstanding, arrive at the conviction of the necessity by the simple process of reason.

The state insolvent laws, (with, I believe, but one exception,) proceed only upon the application of the debtor. They do not operate till he himself thinks proper to petition, and then they give him relief in such manner as they

deem most advisable. Some, by general laws, commit the authority to judicial tribunals; some exercise it themselves by direct legislation upon existing cases; some have permanent regulations; others pass occasional laws; some few grant the most extended relief, discharging from the debt; the greater part, only the limited relief of immunity from imprisonment. Their views, in all these cases, are directed, as in other matters, by state, and not by national policy, and so they ought to be. This policy is different in different states, but in all it is liable to be embarrassed by the very omission of Congress to provide for the case which by the Constitution is committed to their care, inasmuch as it throws upon the states, individually, the almost invincible difficulty of endeavouring to conciliate interests and views that can scarcely be made to harmonize. New-York, being highly commercial, may be very much influenced by commercial feeling in her local legislation on this subject. Pennsylvania, not long ago, passed a special insolvent law for the city and county of Philadelphia. This was an effort to describe commercial cases by local limits, and may be plainly traced to the same fruitful source of embarrassment—an embarrassment that would no longer have an existence if Congress would exercise their authority, and, by withdrawing from state legislation the subject of commercial bankruptcy, leave the states free to pursue each its own appropriate policy upon other cases of insolvency—cases that, from their nature, are essentially dependent upon other and much less extensive considerations.

One great defect, however, of the state insolvent laws, is the one I have mentioned. They wait until the insolvent asks for relief. In the mean time he is consuming, or wasting, or mismanaging the property that ought to satisfy his debts, and, when he comes for relief, has nothing to surrender. The uncontrouled authority over his estate, too, occasions a resort to expedients, which, in a general view, ought not to be permitted—expedients that have become

almost consecrated by practice, but are not, on that account, the less exceptionable. The failing merchant is influenced in the distribution of his property, not by any general considerations of justice, but sometimes by feelings of regard for particular creditors, often by regard only for himself and his future hopes. He pays one, and leaves nothing to pay another. Why? Because one is a friend or neighbour, the other is not; one has lent him money, or endorsed his paper, the other has only sold him goods; one importunes him, the other has not the opportunity; making thus certain arbitrary distinctions, natural enough, but not defensible upon any just general principles. Sometimes, and not seldom, his distribution has reference only to himself. Is he most intimately connected with domestic creditors? He may secure their good will and future aid by giving them a preference to his foreign creditors. Is he most nearly connected with foreign creditors? He preserves their confidence, and lays a ground to hope for their future assistance, by giving the preference to them; and among creditors of the same kind he may adopt a similar distinction. The object of the bill is to prevent all such doings, and to bring back the distribution to the only fair rule, the rule of impartial equality. I do not pretend to pursue the mischiefs that exist in all their details—suffering a failing debtor to make his own assignees, permitting him to extort terms of composition from his creditors, and the like. I refer to these things briefly, to show, that circumstances call for the incorporation of a bankrupt law into the code of the United States, for the *protection of the creditor, and the preservation of commercial integrity and commercial credit.*

It would be a sufficient answer to the argument which supposes that the states may do all that is necessary, to say, that the Constitution does not permit us to think so, or why did it give the power to Congress? The states cannot make *uniform* laws on the subject, nor laws that will operate be-

yond their own territory, much less that will have any foreign operation. The states, in their local legislation, must be chiefly governed by local views—this is the theory of the Constitution—and by the clause in question, they have, themselves, not only conceded the principle, but they have also conceded the fact, that the power in question is one of national, and not of local concern. How can this argument be urged with any thing like even a plausible appearance, by those who, in another instance, endeavour to deduce the principle, not from the express words of the Constitution, but from the mere proof of the fact? You have upon your table a most important report upon the subject of internal improvement. Is there any express authority given to Congress by the Constitution, to legislate on this subject? The answer is plain; there is not. Whence is the authority derived? From the fact merely that national improvements, by roads and inland navigation, may be necessary for the common defence and general welfare. And cannot this be done by the states? The answer again is, no. The states, individually, are not competent to the care of the national concerns. They may and do make roads for themselves, and it may happen that these will be so made in reference to each other, as to produce, by their combination, what is desired—national thoroughfares, for national convenience and national defence. But it may happen otherwise. I warn those who argue thus—who derive the power itself from the necessity and convenience of its exercise—against sending back to the states a power, which the states themselves, upon similar reasoning, have expressly granted to Congress.

The interest which the United States, as a creditor, have in this question, ought not to be overlooked. One of the communications made by the Secretary of the Treasury, during the present session, (I cannot lay my hand upon it) states, that the preference intended to be secured to the United States, is defeated by partial assignments and dispositions of property made by the public debtors. The

steady and regular collection of the public revenue, so important to the public service, is, at all times, worthy of the attention of Congress; and it must, therefore, be considered as a powerful recommendation of a bankrupt law, that it would effectually remedy the evil complained of. The wisdom of the legislature may be able, perhaps, to devise other remedies; I know of none, (and I do not say it without some reflection,) that will be effectual, and not be liable to very great objections.

Upon the remaining part of the subject, that which relates to the condition of the debtor, I shall, at present, say but a very few words; not only because it has been fully and distinctly put before the committee by my honourable friend and colleague; (Mr. Hopkinson,) but because it will be more proper to consider it when we arrive at that part of the bill which contains the provisions for his relief. The general design is to discharge him altogether, provided two-thirds of his creditors shall agree. The commissioners are bound to sign his certificate, if he has been guilty of no fraud; but that will not discharge him. Two-thirds of his creditors must concur, and as they may either give or withhold their assent, at their discretion, without assigning any reason, they will, of course, be determined in their decision, by a general and comprehensive view of the whole conduct of the debtor. Has he been unfortunate? They will agree to his discharge. Has he been unjust, has he been careless, extravagant? They may, at their pleasure, refuse it. Is there any thing unreasonable in this? If, by a summary process, you take all from the debtor, if he has fairly surrendered every thing to his creditors, satisfied a large majority of them that he has been the victim of misfortune, not of misconduct, ought he to be held in subjection to the merciless resentments, or the merciless avarice of a few, and be condemned, at their pleasure, to idleness and despair? And for what purpose? Society is deprived of the benefits of his exertions; he is himself deprived of

the use of those faculties which have been given to him—and for what? Does the creditor gain by it? Has he a chance of obtaining more? I have the authority of experience for saying, that the chance is not worth estimating. Look at the operation of those laws, which grant only a partial discharge. Is a creditor in a better condition for the hold he has upon the future earnings of the debtor? One of two consequences inevitably follows; the debtor either sinks into a state of hopeless and helpless inaction, or conceals the fruits of his industry by various contrivances that are hurtful to his and to the public morals. Besides, we must never forget, that it is for misfortune that this provision is to be made; for misfortune, which no prudence can avert or prevent, but which is inseparably incident to the pursuits of those who are proposed to be comprehended in this law. But I forbear, at present, to press this part of the case.

I would beg leave to remark, however, that I confine myself to the exemption of the earnings of his industry. I have no objection to give to his creditors whatever he may afterwards acquire by gift, devise, descent, or any other means, in short, but his own exertions. Of these he should have the full benefit, not only for his own sake, but for the sake of society.

It was not my intention to notice the objections to particular parts of the bill, nor will I at this time notice them. There are two or three objections of a more general character, upon which I will ask the indulgence of the committee to say a very few words.

A system, it is said, must be a bad one, and contain in itself very strong temptations to fraud, which requires such bloody penalties as are to be found in the English statutes. The whole penal code of England is deeply stained with blood. When Blackstone composed his Commentaries, he mentioned, with regret, that of the offences which a man may commit, no less than one hundred and forty were

capital felonies, punishable with death. How many may have since been added by statute, to the catalogue, I do not know. The bankrupt laws of England are in the spirit of the rest of this code, and their penalties are no better evidence of the temptations offered by those laws, than are the penalties in the laws for securing life and property, that the security of life and property offers a great temptation to the perpetration of murder and robbery. You may trace it, if you please, to the state of society; you may trace it to the error of the legislature, or to a general want of humanity in their institutions, to extreme prodigality in the punishment of death, but not to the mere existence of laws for securing life and property.

Again; it is said, that a bankrupt law must be a source of endless litigation, and the evidence of it is a bill that passed some time ago for completing the execution of commissions under the former law. To make this argument available, it would be necessary to know how many cases were finished, and how many remain incomplete. It might be useful, then, to compare the proportion of each, with the cases of each kind under the state insolvent laws.—The comparison would be decidedly in favour of the bankrupt law, unless, indeed, the cases under the insolvent law are considered as terminating with the discharge of the debtor, for, in truth, very little more ever comes of them. It may be well, however, to remind the honourable member who thinks the want of a court of chancery of so great importance, that a system without it must be a wretched system; it may be well to remind him that one of the chief objections to a court of chancery, so commonly urged, is, that its proceedings are interminable. But, I am sensible that I have already trespassed too long on the attention of the House.

# SPEECH

## ON THE BANK OF THE UNITED STATES, DELIVERED IN THE HOUSE OF REPRESENTATIVES, FEBRUARY 22, 1819.

[On the 30th November 1818, on motion of Mr. Spencer, of New-York, a resolution instituting a committee of inquiry into the affairs of the Bank of the United States, passed the House of Representatives. The committee, consisting of Mr. Spencer, Mr. Lowndes, Mr. M'Lane, Mr. Burwell, and Mr. Tyler, reported on the 16th January 1819. A majority of the committee, Messrs. Spencer, Burwell, and Tyler, were of opinion that the charter of the Bank had been violated in the following instances:

1. In purchasing two millions of public debt, in order to substitute them for two other millions of similar debt, which it had contracted to sell, or had sold in England, and which the Secretary of the Treasury claimed the right of redeeming.
2. In not requiring the fulfilment of the engagement made by the stockholders, on subscribing, to pay the second and third instalments on the stock in coin or funded debt.
3. In paying dividends to stockholders who had not completed their instalments.
4. By the judges of the first and second elections allowing many persons to give more than thirty votes each, under the pretence of their being attorneys for others in whose names shares then stood; when those judges, the directors, and officers of the Bank, knew that these shares belonged to the persons offering to vote upon them as attorneys.

On the 19th January, Mr. Trimble, of Kentucky, offered the following resolution. Resolved, That the Attorney General of the United States, in conjunction with the District Attorney of Pennsylvania, shall immediately cause a *scire facias* to be issued, according to the 33d Section of the Act "to incorporate the subscribers to the Bank of the United States," calling on the corporation created by the said act to show cause wherefore the charter thereby granted shall not be declared forfeited, &c.

On the 31st January, Mr. Spencer offered a resolution directing the Secretary of the Treasury to withdraw the public deposits from the Bank, and the Attorney General to cause a *scire facias* to be sued out, with the view to try the question of forfeiture, unless the Bank should assent to a series of propositions, which, when assented to, were to be made, by Act of Congress, part of the charter of the Bank.

On the 9th February, Mr. Johnson, of Virginia, submitted a resolution instructing the committee on the Judiciary to report a bill repealing the charter of the Bank.

It was during the discussion of these resolutions that this speech was delivered. The principal other speakers were Messrs. Spencer, Pindall, Barbour, and Tyler, against the Bank, and Messrs. Lowndes, M'Lane, and Storrs, in defence of it.—The resolutions were rejected.]

MR. CHAIRMAN: I must beg the permission of the committee, to offer to them some observations upon the several propositions that are now submitted for their consideration and decision.



The inquiry in which we are engaged, is attended with some intrinsic difficulties, of no inconsiderable magnitude, and calculated very much to embarrass our deliberations, as they must have been to embarrass the deliberations of the select committee, to whom the examination of this subject was more particularly confided. In the first place, it is retrospective, and I admit it is necessarily so. We are called upon to take a review of the management and conduct of the bank, during all the period of its existence, and we expect to find that the best has been done in every instance, which, with the full light derived from a knowledge of all that has since happened, appears to us to have been possible. In this manner it is, that battles are fought over again in discussion; and, whether they have been lost or whether they have been won, it seldom happens that those who thus sit in judgment upon them, cannot detect some errors that have been committed—point out advantages that have been lost—and opportunities that have been suffered to pass unimproved. The just rule of judgment in such cases, if, indeed, its application were practicable, would be to place ourselves in the situation of those, upon whose conduct we are called to pass, in the midst of the difficulties by which they were surrounded, and with no better view of the future than what their own judgment could afford them.

It is in the nature, too, of this inquiry, conducted as it has been, to group and connect together all the exceptionable acts that have been done by those to whom the management of the institution has been confided: while, to use a bank phrase, it gives no credit for those things which were right, and even entitled to some commendation. I wish, sir, to be distinctly understood. I am not using the language either of complaint or censure. I only say, that as the inquiry, from its nature, was in a great measure confined to exceptionable acts, it must necessarily present them in a body, without relief from their association with the mass of good deeds with which, in their order, they stood

connected. This is a sort of judgment which none of us would be willing to submit to, or could expect to endure. Let the life of any man, the most honest and honourable, be exposed to the same kind of examination. Begin with his infancy, (to use the language of the gentleman from Virginia) and, following him through the different periods of his progress, put together, as constituting his history, whatever, from the severest scrutiny, you can find, that has deserved reproach or censure. What a dark exhibition would it be!

Besides, sir, what is at last the test we apply? We set opinion against opinion, upon a subject of a very comprehensive, and of a very complicated nature, involving much detail, and every detail involving more or less speculative inquiry.

There are extrinsic difficulties, of no less magnitude. It cannot be denied that there has been a vast deal of prejudice in the public mind against this institution, which, whatever may be our resolutions to the contrary, affects us insensibly, and, when we neither know nor suspect it. The sources of this prejudice are sufficiently apparent.

The state institutions have many of them been induced to regard the national bank as an enemy, and the spirit of hostility which they have felt, has had a most powerful influence throughout the community, with which they are so extensively and intimately connected.—It is in the ordinary course, too, of the operations of the bank, to give frequent offence to individuals. Every man who is refused a discount, thinks himself aggrieved, and indulges a feeling of resentment, not at all mitigated by any consideration of the circumstances that may have rendered it prudent, or even necessary, to reject his application. The same remark might be made, with equal truth, of every sort of accommodation which the bank is supposed to have the capacity to afford, but which events, beyond its power to control, frequently oblige it to withhold. When the directors, not

very long ago, exercising a right that no one denies to have belonged to them, and exercising it under the compulsion of circumstances, so imperious, that every one now confesses they could not have refrained without a plain violation of their duty—when, I say, they determined that branch notes should thenceforth be paid only where, upon their face, they were made payable, there was an almost universal clamor.—Sir, there is still another source of prejudice. The bank has had the day of its beginning. It is now in the day of its humiliation. But, it has had the day of its prosperity, too; when success, even beyond the expectations of its most sanguine friends, seemed to crown its operations. In that day—I appeal to many who are within hearing of what I state, and are able to confirm its truth, as a mere matter of fact—I appeal to every one acquainted with our nature, to say whether it is not what would naturally happen—those who had themselves refused to subscribe, and discouraged the subscription of others—those who had thus neglected to avail themselves of what then appeared to have been the golden opportunity—suffered all the mortification of seeing their predictions continually falsified, and could scarcely avoid the influence of a certain deeply implanted kindred feeling, which is never more sharply exerted than when we see others profit by what we have permitted to escape from ourselves. They did not avoid it.

There are, besides, many, who think that a national bank, however organized, is impolitic and unwise: And there are some who think it not within the constitutional power of congress to establish a bank.

Under the combined operation of such a mass of causes, the committee had no doubt a difficult task to perform, even if they had taken much more time for its performance than seems to have been allotted. If they have fallen into errors, it is not at all surprising, but it ought to secure from them some indulgence for error in others. It will at least

entitle us to differ from them in opinion, and freely and fully to canvass the grounds of the report.

Before, however, I proceed to examine the report, I beg leave to call the attention of the committee to the authority under which we have been acting, as it is to be found in the law for incorporating the subscribers to the bank. The provisions of the charter, designed to secure the faithful administration of the bank, contain in them a distribution of powers, just in itself, and perfectly well adapted to attain the object. The power given to this house, (section 23) is confined to a single point of inquiry, namely, whether or not the charter has been violated; in order that we may be enabled to judge whether or not it is expedient to institute legal proceedings for its repeal. The examination we are authorized to make, is subordinate to this object; and, to my mind, it is quite clear that we have no right to pursue it further. The care of the remaining interests of the government in the institution, is confided to the Executive. The President appoints the government directors. The Secretary of the Treasury has an almost unlimited power of examining the proceedings of the bank. Weekly statements are to be made to him, (sec. 11, art. 15) and he has the right to inspect every thing except the accounts of individuals. The purpose is manifest. It is, in the first place, to enable him to judge of the conduct of the directors appointed by the government. It is, in the next place, to enable him to decide whether the public interest in the bank, consisting of the stock belonging to the government, and the deposits of public money, is faithfully guarded. The necessary sanction for enforcing the exercise of this power is also confided to the Executive. The President has authority to appoint, and to him is given the authority to remove, the directors on the part of the government (sec. 8.) A much more important sanction is the power given to the Secretary of the Treasury, by section 16, to withdraw the public deposits, laying before Congress his

reasons for so doing. The interests of the stockholders, which form the remaining branch of this great national concern, were intended to be left to the care of the stockholders themselves, as their best and safest guardians—their natural guardians; and it is the right of the stockholders to delegate the authority to such directors as they may think proper. This right is enforced and secured by the power of election. Their servants are accountable to them, precisely as we are to our constituents. If, upon a review of our conduct here, they are not satisfied with our efforts to serve them, they elect us no more, but devolve the honourable trust of representing them in the councils of the nation, upon others, whom they think more worthy of their confidence.

These provisions, thus arranged and distributed, are of sufficient efficacy for all the purposes that were designed to be accomplished. Thus arranged and distributed, they are in harmony with each other, and while every interest is guarded by its appropriate sanction, they all co-operate to secure the common result—a faithful administration of the bank.

If this be a correct exposition of the terms of the charter, our inquiry ought properly only to be, (what alone it can be effectually,) whether the charter has been violated. Any other course will inevitably lead us into difficulty. If we undertake to examine the general administration of the affairs of the bank, or to investigate the conduct of particular directors, we are involved at once in the danger of an interference with the Executive. To that department it belongs to decide whether the public duty has been performed. The officer at the head of the treasury must always be well qualified to decide. None but a citizen of distinguished talents will be placed in that high and responsible station, and, when there, his official occupations, the habitual tenor of his studies and reflections, his daily acquaintance with the management of the bank in all its re-

lations to the fiscal concerns of the nation, as well as his repeated inspection of the statements exhibited, will enable him, better than any other person, to judge how far its concerns are faithfully administered towards the public. Are we not in danger, too, of involving ourselves in collision with the judiciary? We are here entertaining a mixed inquiry, partly of expediency, and partly of charter-right, mingled in such a way, that, in deciding whether the charter has been violated, we make no distinction between errors, or, if you please, misconduct, in the management, and such offences of the corporation as would work a forfeiture of the charter. Indeed, the distinction, obvious as it is, seems scarcely to have been noticed, either in the report of the committee, or in the debate that has taken place. The great stress of objection has rested, not so much upon the specific violations of charter, alleged to have been committed, as upon the more comprehensive ground of mismanagement in the exercise of indisputable charter-rights. Suppose, then, that, under the impression of considerations like these, you send this corporation to the judiciary, there to receive its trial—you may send it there with all the weight of prejudice arising from a vote of Congress—you may, and you will, in some degree, pre-occupy the public mind, always deeply affected by the judgments of their representatives, and you may, and probably will, more or less impair the chance of a fair and impartial trial. But, when this trial shall come—when the corporation shall appear at the bar of a judicial tribunal—there will be an end to every question except the naked question of forfeiture. There will be an end to every consideration that is foreign to that precise inquiry, and then the consequence will be, that, following a different rule of judgment, the judicial tribunal will probably arrive at a different result. You are thus in direct collision. Different departments of the government are placed in a state of hostility towards each other, the public mind is irritated, and that harmony which

we all know to be of so much importance, in the structure of our government, is uselessly endangered.

Sir, we interfere, to a most alarming extent, with the just power of the stockholders. They are the exclusive judges of whom they will have for directors. They are the *best* judges. That sure instinct, "that keen, steady, and, as it were, magnetic sense of his own interest," which every man feels and obeys, in his own concerns, is the best security to be relied upon for a careful and prudent selection. It is the right of the stockholders, by the charter, and it is almost the only right they have reserved. To the government they have conceded much; for themselves they have retained only the power in question, to be exercised under such modifications and restrictions as Congress thought fit to prescribe. Upon the faith of an undisturbed and free enjoyment of this republican right, of choosing their own representatives, they have embarked their property in the institution; and would you, can you, without doing unjust violence to the compact you have made with them, impair or disturb the exercise of the power that belongs to them, of judging for themselves whom they will have for directors? Sir, I will put to you what may at this moment, perhaps, be deemed the strongest case. Suppose they choose to elect a broker, or a speculator—can you say they shall not? Have you the power to tell them what shall be the occupation, what the character of the men whom they are to employ? You may think their selection unwise or imprudent, but they will answer you that they know their own interests, and are able to take care of them. That in the very instances you object to, though the individuals may be obnoxious to the imputation of being speculators or brokers, and you, on that general ground, may think them exceptionable, yet they, the stockholders, have the means of knowing their individual characters from various sources, inaccessible to you, and feel the fullest confidence in their intelligence, and fidelity to the institution. I do

not now touch the question of elections ; it belongs to a different part of the inquiry.

I will make but one observation more upon this branch of the subject. It is essential to the interests of the stockholders, and it is no more than just to the directors, that the latter should be free, while they are performing the duties that are assigned to them ; that they should be free, not only from all restraints except those to which the law subjects them, but that they should be free from the apprehension of an unlimited and undefined accountability. Many things are exclusively confided to them, and must be so confided. Their own judgment, fairly applied—their own discretion—is what must guide them. Who will undertake an office like this—whom can we rely upon to execute it with fidelity—if he is to act under the terror of an investigation, which may put the worst construction upon well meant efforts, which may even expose his best acts to censure, and which, governed by no known rule in its course, and limited by no measure in its result, is calculated to confound all distinction between the officer and the individual, between error and misconduct, and by a hasty sentence to inflict the keenest punishment that an honourable man can endure? And this, too, upon what a member of the select committee has termed, and properly termed, an *ex parte* inquiry, where the accused has not the opportunity either of explanation or defence, and where the first notice he receives is in the heavy condemnation going forth against him under the respected authority of a committee of this honourable body.

Sir, other objections will readily present themselves to such an inquiry. We have no better rule or principle to direct us, than one man would have in judging whether another managed his estate to the greatest advantage. If the inquiry were simply whether the charter had been violated, we should have a comparatively easy duty. There might, and from what has occurred, I think it probable



there would be difference of opinion. Still, we should differ only about the application of established rules, and should be relieved from the most unpleasant part of the present inquiry.

But I know well that every public body, however constituted, listens with reluctance and with some displeasure, to any argument or suggestion that tends to bring in question its own power. I do not mean—for it is no longer material—to question the power of this house, in its immediate application to the business in hand. It is too late. Still less do I mean to avoid the full examination of all the grounds of complaint and censure which are displayed in the report of the committee. But, I have thought it right, to submit, with candour and freedom, such observations as occurred to me, upon the general nature of the authority possessed by this house, chiefly with a view to expose the mischiefs that might result from transcending it. Every member will allow to them such weight as he thinks they deserve, and no more.

I will now proceed to consider the subject, under the two aspects in which it is presented by the committee.

I. As regards the general management of the institution.

II. As regards the alleged violations of the charter.

1. We all of us remember distinctly the state of things that existed when the law passed for incorporating the subscribers to the Bank of the United States. We had a currency, or rather, to speak more accurately, we had currencies, local in their circulation, and variously depreciated in different parts of the Union; in some quarters of the country as much as 20 per cent. We had no general currency; none that would circulate freely everywhere. The evil effects were already very manifest, and threatened to increase. To say nothing of the obstructions and difficulties which were thrown in the way of domestic commerce and exchange, nor of the continual irritation that was occasioned by the changes in value which took place at every step by

what was called money, in its progress, either with travellers or traders, through different parts of the Union—to say nothing of the effect upon the credit of the country—but passing these by, as evils familiarly known and felt, there still remained one great source of grievance and public mischief, which it became peculiarly the duty of the government of the United States to endeavour to remove. The revenue of the government was received in the paper of the state banks; its debts were paid in the same paper. What was the consequence? Its funds were not transferable from place to place, according to its wants; but confined in their use to the local limits which bounded the circulation of the paper in which they happened to be paid. Again—There was nothing like uniformity in the payments made to the government. A merchant in Boston, owing precisely the same nominal amount, paid twenty per cent. more than a merchant in Baltimore. There was the same inequality in the disbursement, as in the receipt of the revenue. The public creditor, who had the good fortune to receive his money at Boston, received twenty per cent. more than the creditor who was obliged to receive it at Baltimore or Washington. In addition to all the inevitable evils belonging to such a state of things, (sufficient surely, if allowed to continue, to have endangered the well being of the Union) there was one, perhaps, also, inseparably incident, which began to manifest itself. I allude, sir, to the power it gave to those who were intrusted with the collection and disbursement of the public moneys. They had the opportunity of benefiting themselves, and of favouring their friends, at the expense of the treasury, and at the expense of the public creditor. The very possibility of such an abuse was a sufficient ground of suspicion. At the period we are speaking of, an officer of the government found it necessary to ask of this house an investigation of his conduct, in order that he might vindicate himself from certain injurious rumours circulated against him, upon no better foundation.

than the one I have mentioned. The investigation took place; the result was satisfactory; and I refer to it only to bring into view one of the many kinds of mischief growing out of the disordered condition of the currency. Whether the state institutions would of themselves have corrected the evil, I do not think it necessary to inquire. The government of the United States had no direct controlling power over them; and, if they had so far sacrificed their own interests, in deference to the public good, as to restrict their business, and, of course, their profits, it must have been from a voluntary submission to motives of a higher character than ordinarily govern the conduct of individuals or bodies. But this I will say, that if they were to be brought back by any thing deserving the name of coercion, it could not have been gentler than that which has been employed by the Bank of the United States. Sir, when this subject was before Congress at the time of passing the act of incorporation, it was thought by many that the destruction of the state institutions would rapidly follow the establishment of the National Bank. I confess myself to have been one of those who were influenced by this apprehension. I thought the new institution would press heavily upon the old, and through them would press severely upon the community. I did not then see how the great public views were to be realized, without departing from that course of lenity towards the state banks which the interests of the community seemed most imperiously to require.

The objects to be attained were thus immense: the interests to be conciliated were of the highest importance, and at the same time apparently irreconcilable. The task was a fearful one; and the manner in which it has been executed, when it comes to be fairly developed, will seem little short of marvellous. If proof were necessary of what was generally thought at the time, to be the burden the bank had assumed, and of its capacity to bear that burden, we might refer to the history of the subscription at the opening of the

books. Great doubts were entertained whether it would be filled. In fact, it was not filled during the twenty days prescribed by the law. There remained unsubscribed above three millions of dollars, nearly the whole of which was taken by one individual in Philadelphia.

I will now proceed to show what the bank has done, considering, first in order, the *national objects* it was designed to accomplish.

Among these, the most interesting, and in every point of view the most important, the one which chiefly induced the passage of the law—was the introduction of an uniform currency, in sufficient quantity to answer the purposes of circulation, so far, at least, as to enable the government to collect and disburse its revenue. I mean a currency as nearly uniform as the nature of things will admit. It cannot be supposed to be within the power of any government, or of any bank, to make a dollar at New-Orleans worth as much to a merchant in Boston, as a dollar in Boston; unless, indeed, he has employment for his dollar at New-Orleans, in which case it may be worth more or less to him, according to circumstances. We might as well pretend to make a bag of cotton worth as much upon the plantation where it is produced, as in the warehouse at New-York, or in the manufactory at Philadelphia. But this part of the subject has already been fully and ably handled by the gentleman from South Carolina, (Mr. Lowndes,) who has shown conclusively that the currency afforded by the Bank of the United States, approaches nearer to uniformity throughout the whole extent of this great country, than has been attained by nations possessing at least equal advantages, and operating within much narrower limits.

Neither was it understood or expected that the Bank would be able to place, and to keep in circulation, everywhere, as much as in each particular quarter of the Union might be wished or wanted. This is as impracticable in regard to states and districts of country, as it is with respect to

individuals. A parent may give to a child a fortune adequate to his support, and suited to his circumstances, but he cannot prevent him from wasting or parting with it, unless he imposes restrictions upon its use. The very phrase, "a uniform currency," implies a currency that will pass everywhere: that will flow everywhere, without any obstruction, but what arises from the expense of conveyance; of equal value everywhere, and for that very reason in unequal quantities. This is the precise distinction between the paper of the Bank of the United States, and the paper of the state banks; which, having no currency beyond certain local limits, remains within them in greater abundance than is necessary. It is the same distinction which exists between either kind of paper, when not redeemable, and gold and silver. We may illustrate it more clearly by an instance: A merchant in the state of Ohio makes a sale in Ohio, in order that he may be able to buy in Baltimore, or he sells in Baltimore that he may buy in New-York. He wishes, in either case, to receive what will pay for his purchase in Baltimore or New-York, and he carries from the place of sale to the place of purchase the amount he has received. It has happened to most of us to have some experience of the nature of this distinction. Formerly, there was great complaint by travellers in some parts of New-England, that the money, or rather the paper, they received in one town, would not pass in another. There, I believe, the grievance has ceased. But in other parts of the country we experience it every day; being obliged continually to inquire whether the paper put into our hands in one place will be taken in payment in another, and feeling instantly the inconvenience, if, by mistake, we carry it beyond the limited bounds of its circulation.

Where the currency has the quality I have mentioned, that is, uniform or nearly uniform value, the quantity that will remain at any given place depends upon the course of trade. The quality depends upon its solidity. The memo-

rial to the Ohio Legislature, or the report of a committee of that body, (I do not know which, for I was not in the house when it was quoted by the gentleman from South Carolina,) complains, in substance, that such a currency was furnished to them. That is the amount of the complaint, for they say they were tempted to employ it in purchasing from the cities to the eastward beyond what they ought to have purchased. A very singular complaint, indeed, which charges upon others the consequences of their own imprudence! The complaint should be, that they did not keep what was given to them; or at least a portion of it, and use it, as they might have done, in the payment of their dues to the government. There is no doubt, however, that they have approached, if they have not reached, the true cause of their present embarrassments. This currency would not have wandered away, and left them destitute of the means of paying their debts, if their local circulation had not been overcharged with state bank paper, depreciated from its abundance—too easily obtained—supplying the purposes of local exchange, and failing when it was wanted for the more extensive exchange, to which the United States bank paper, from its uniform value, was exactly adapted. The paper and credits afforded by the Bank of the United States were thus banished by the local paper; they were sent off to perform the distant service of buying in the cities at the eastward, and the people of Ohio kept nothing to pay their debts but the paper of the state banks. This was their own fault, imputable to themselves alone. Time, economy, and the industry of the state, employed in producing what will buy money, or, in other words, what may be exchanged with those parts of the Union where the money has gone, will bring all right.

One of the charges made by the committee against the management of the Bank of the United States, (and which this is the most fit place to notice,) is on account of the supposed excessiveness of its loans in those states and cities

against which there was a balance of trade—those which, to simplify the idea, were debtors—particularly in Kentucky, Ohio—in Baltimore and Philadelphia. The argument they employ to sustain this charge, namely, that injustice was done to the states and cities which had the balance in their favour, or were creditors, has already been amply and conclusively refuted. It has been shown—indeed it appears from the statement of the report itself—that these loans were in the highest degree beneficial to the creditor states and cities, the money obtained by the borrowers going directly thither, and enabling them to obtain specie from the branches, to be employed in the manner most advantageous to themselves, either by their banks or by individuals. “The effect of these draughts upon the northern offices, was, to compel the constant remittance of specie there, &c.” (Report, p. 4.) How, then, it can be said “that those places were made tributary to Baltimore,” I am altogether at a loss to understand.

But, considering the diffusion of an uniform currency throughout the United States, in sufficient quantities for public purposes, to have been, (as it is conceded to have been,) an important public object, it will be easy to show that the imputed error is far from being censurable. To put in circulation such an uniform currency as has been described, in the manner most advantageous to the Union, it was *necessary*, when the bank was organized, to give a preference to those states against which there existed an unfavourable balance. It would flow from them, in payment of their debts, (retaining, if they were prudent, what was required for local purposes,) where it ought to go, that is, into the creditor states, and thus the creditor states would also be supplied. But, what was thrown by the bank into the creditor states, would never find its way to the debtor states, unless it were in the shape of loans by them, which was not to be expected. If an individual, having a sum of money to lend, were disposed to lend it to one of two per-

sons, each of whom he was equally inclined to serve, and in both of whom he had confidence as to their ultimate ability to repay, and it so happened that one of them was indebted to the other, would he be most likely to benefit both by lending it to the debtor, or by lending it to the creditor? The answer is obvious: if lent to the debtor, he would be enabled to apply it towards the payment of his debt, retaining what might be necessary for more urgent wants. The creditor would receive his money. Thus both would derive some advantage. If lent to the creditor, none of it would find its way to the debtor. A different course would, perhaps, have been more for the interest of the institution, as it is always better to lend to the rich than to the poor; I mean better for the lender. But, if the object was to distribute an uniform currency throughout the United States, there was no error. That such a currency has been introduced, in sufficient quantities to answer all the purposes of the government, cannot be controverted. It is undeniably proved by the fact, that the receipts and payments of the Treasury are now made in a currency of uniform value. Neither can it be controverted, that such a currency has been introduced into every quarter of the Union, in sufficient quantity. If it has not remained in the places where it was introduced, that cannot be chargeable to the bank, for the bank had no power to prevent its migration or transfer. So far, therefore, as respects this great object—an uniform currency—the duty of the bank towards the public has been faithfully and fully performed.

Nearly connected with this object, was the effort to make the branch notes payable everywhere, without regard to the place of payment indicated upon the face of them. It would undoubtedly have been a great public convenience; but it was more than the public had stipulated for, and more than the public had a right to expect. I think it easily demonstrable, that the system could not be acted upon without great inconvenience and loss, and serious danger to the



institution. It must be remembered, however, that the practice of the late Bank of the United States, whose notes were only payable or receivable at the place where they were made payable on their face, had been strongly, though I agree unreasonably, reprobated. It must be remembered, too, that many well informed men believed in the practicability of the plan first adopted by the present bank, and probably nothing but experience, the most authoritative of all teachers, would have convinced them of their error. Under these circumstances the experiment was, perhaps, necessary to be made, in order that the public might be fully satisfied. It was certainly well meant and innocent. "The wants of the country, and the interest of the bank, (says the President, in his letter of the 4th October, 1817. Documents, p. 28,) require an extensive circulation of its paper; and it is the policy of the parent board to encourage the indiscriminate use of the notes of the bank, reserving for imperious circumstances, and inevitable occasions, the exercise of the legal right which it possesses, of declining to receive or pay, except at the respective places where payment is promised on the face of the notes." The experiment has been made; experience has condemned the attempt; "imperious circumstances" have compelled the bank to exercise the right it possesses; and I am glad to find that the report of the committee approves the change, and admits that it was made in the manner least exceptionable and inconvenient. There must be an end now to the complaint made about this act of the bank.

I will now ask the attention of the committee to another branch of the public management of the bank—that which regards its duties towards the government. Of the manner in which these duties have been fulfilled, no one can be better qualified to judge than the Secretary of the Treasury; no one would more promptly feel the inconvenience of the smallest failure, as they are all intimately connected with the fiscal arrangements confided to his care. His testimony,

therefore, ought to be of the greatest weight with the committee, if, indeed, it be not quite conclusive; for distrust and suspicion must have acquired a most unreasonable and excessive influence in our deliberations, if they can incline us for a moment to question or doubt the statements of that high and distinguished officer. In a letter of the Secretary, during the last session of Congress, the words of which I cannot quote, but to which every member may refer on the files of the house, he expresses, according to my recollection, a general approbation of the conduct of the bank, as having exceeded his expectations. In his letter of the 4th December, 1818, to the select committee of this house, (Documents, p. 95,) he states in detail how the specific duties of the bank towards the government have been performed. I appeal to that letter to show that they have always been faithfully performed.

But the manner in which the bank has performed its duties towards the government, the services it has rendered to the government and nation, cannot be more plainly evinced than by a statement extracted from the documents furnished by the select committee. The bank commenced its operations about the 1st January, 1817, excepting a loan to the government, of \$ 500,000, made in December, 1816. The public deposits, on the 31st January, 1817, amounted to \$ 1,147,772 97; in the following March they had risen to \$ 11,615,017 62; the 30th April they were \$ 11,345,796 75; and on the 29th July, \$ 24,746,641 26. (See Appendix A.) This, sir, was when the bank had been in operation but six months. That this immense amount of \$ 24,746,641 26, was the saving of the revenue received during that time, no one will pretend. It was the accumulation of revenue previously collected, distributed throughout the United States, in credits of state banks, variously depreciated, and of which the government could not be said to have the command, because they were local, and of course applicable only where they happened to be, and

where the public service did not require their expenditure. By this single operation, twenty-four millions were thus converted by the bank from depreciated, local currency, into specie, or, what was equivalent to specie, of universal circulation, and which the government, through the agency of the bank, might apply, without expense, wherever, and whenever, its wants or its service required.

Another conversion took place immediately after, highly advantageous to the government, and, I must be allowed to add, extremely unfavourable to the bank. With \$13,398,438 02, part of the \$24,746,641 26, which had thus been appreciated, and rendered available to the government, by the assumption of the bank, the government, on the 31st July, 1817, redeemed, at par, \$13,398,438 02 of the public debt, belonging to the bank, which had been paid in by the subscribers. The report speaks in terms of censure, of what it styles the "unfounded and unnecessary complaint, by the officers of the bank, against this very prudent measure;" meaning the redemption of the debt. That it was the right of the government to redeem, I do not deny. That the officer at the head of the treasury, whose first duty is to the government, was justified in the measure by a proper regard to the interests of the government, I shall not at all question. I will admit, too, that, as the government clearly had the right, and chose to exercise it, complaint by the officers of the bank was altogether useless. But, that the operation was prejudicial to the interests of the bank, and might reasonably cause some dissatisfaction in those to whom those interests were confided, I deem most perfectly evident, and altogether consistent with that zeal for the real welfare of the institution, in which some other parts of the report seem to suppose them to have been wanting. By the original plan, a large proportion of the capital was to consist of public debt, bearing an interest, with liberty to sell in small successive portions. The value of such a possession, to a new institution, which

the report supposes ought to have "proceeded gradually, growing with the growth, and strengthening with the strength of the nation," (page 7) it requires no great financial skill to estimate. It was a sure resource for obtaining the means of extending their business, when that should become expedient, and in the mean time was productive. It was all redeemed at once, and it was redeemed at par, when the market price was considerably higher. But, passing by this loss on the redemption, the mere circumstance of withdrawing at once thirteen millions of stock, and throwing suddenly upon the bank thirteen millions of money, for which they were to find immediate employment, must have materially, and most injuriously interfered with their arrangements. There can be no doubt that it led directly to some of those measures (the extension of loans on stock, for instance) which the report most strongly disapproves. But, be that as it may, none can question the advantage of it to the government.

By the redemption of the public debt, and payments of the government, the public deposits in October 1817, were reduced to \$7,743,899 74. In October last, (1818) the government redeemed a moiety of the Louisiana debt, exceeding five millions of dollars, and this, too, was done through the agency of the bank.

Looking back to the period when the bank was established, considering the state of things at the moment when it came into existence, considering how short a time it had been in operation, and the difficulties it had had to surmount, the effect is wonderful, and, to all unprejudiced minds, would seem to indicate a steady and faithful attention to all its public duties. Sir, that institution has been a servant, I had almost said a slave, to the public; a faithful servant, always forward and zealous, even at some expense to itself, to promote the public interests, in all their various and complicated relations. This is the spirit in which its affairs have been administered. It still continues

to perform all its public duties, without affording just cause, in this respect, either of complaint or of reproach. I might add to the list of benefits, received by the government and nation, the decided improvement which rapidly followed in the public credit of the country, both at home and abroad. If gentlemen doubt, let them consult the price current of stock here, and in England.

The only allegation, indeed, of any thing even approaching to a default in the public duty of the bank, is that contained in page 10 of the report, where it is stated, "that the amount done under that resolution (to discount notes for those who had revenue bonds to pay) was small, &c." This is certainly a mistake, as has already been shown from the letter of the Secretary of the Treasury—from the evidence of Major Butler—and from the fact that there has been no complaint. Such has been the inclination to censure, that you may rely upon it no well founded cause would have been suffered to escape. It is a mistake arising from the circumstance, acknowledged by a member of the committee, (Mr. M'Lane) that the inquiry was *ex parte*. If they had asked for information, they would have learned, that at every discount day the directors had before them a list of the bonds coming due, and that they uniformly gave a preference to those, who were to pay them, as far as they could do so consistently with the interests of the bank, of which I beg leave still to say they were the exclusive judges.

The next object of inquiry is, how the management of the bank has been conducted in regard to the interests of the stockholders. This is altogether independent of the question of violation of charter, which will be considered separately hereafter.

In the progress of an institution like the bank, founded and established with a view to certain great public objects, perplexing questions might, and would, occasionally present themselves. The interests of the public might, in

some instances, be at variance with those of the stockholders. Which were to yield? If, upon every such occasion, the directors had allowed a paramount influence to the interests of the stockholders, and had sacrificed the public objects to the profits of the institution, the public would then have had some reason to complain. But, if every public duty has been faithfully and fully performed, even beyond any reasonable expectation that could have been entertained, it is certainly a very singular inquiry to be made by Congress, whether the utmost has been done for the interest and profit of the stockholders. That is an investigation which belongs to the stockholders themselves, and which they are competent to conduct, having the means in their hands of correcting errors, and of removing grievances, by changing their officers. But what is to be the consequence, if Congress, assuming their power, should be of opinion that the institution has not been well managed for the interests of the stockholders? To alter the charter—to take away the charter—or subject it to the wasting and destructive process of a protracted judicial examination by *scire facias*? Have the stockholders made any complaint? Have they asked from us any relief? Not at all; on the contrary, they implore us to abstain. You have upon your table a memorial to that effect from Boston, a memorial from New-York, and an exceedingly well reasoned memorial from Richmond, which deserves the attentive perusal of every member of the house. If *their* interests have been injuriously affected, they have, on that account, a stronger claim upon the public. After we have gained so many objects of great national importance at their expense, would it not be iniquitous, yes sir, a national iniquity, now to deprive them, by a wanton exercise of unjust power, of all the hopes of an equivalent, founded upon the public faith pledged to induce them to embark their property in this concern? Can you restore them to the state in which you found them? Will you return that part of the bonus which has by this time become

due, and I presume been paid? Will you restore to them their stock and coin? Will you, finally, indemnify the subscribers, and the purchasers, who have bought upon the assurance of the charter, for the losses they will sustain? A gentleman from Virginia, a member of the committee, (Mr. Tyler,) seems to have intended to anticipate some of these inquiries, by saying, that the bank, after paying all its debts, could now return to every stockholder "dollar for dollar." A most honourable concession, undoubtedly, as it respects the management of the bank, and one that goes far to answer every complaint against it. For, if the public service has been punctually performed, and the bank (after dividing eighteen per cent. in two years and an half) could now wind up its concerns, and pay to every stockholder "dollar for dollar," no man who has the slightest acquaintance with the matter can deny, that it must have been well managed. But how long would it require to gather together the funds that have been scattered over the United States, so as to be able to restore them to the stockholders? Seven years have elapsed since the charter of the late bank expired; its concerns were much less extensive in amount, as well as in the space through which they were spread; it expired, too, under circumstances highly propitious for drawing in its resources; and the management of its affairs had been uncommonly able and faithful. Nevertheless, I believe they are not yet closed. How long, then, I repeat, would it be, before this "dollar for dollar" would be restored to the stockholders? It is matter of conjecture—but still with so much of certainty belonging to it, that no prudent man would give a stockholder any thing like "dollar for dollar" for his share of the proceeds. Sir, I cannot reflect upon the mighty wreck, without astonishment at the coolness with which even the possibility of it seems to be contemplated—The organization destroyed, the fragments scattered over the whole United States, no longer obedient to any power but the power of time and chance,

which, like the winds and the waves, may drive them to the shore, or may drive them where they can never be reached or collected.

The first topic of complaint is the too great liberality towards the state banks. As a charge of error, it may not be wholly without foundation. But, it answers, fully and authoritatively, and I hope the sequel will show, satisfactorily, one of the heaviest charges commonly made throughout the country against the bank—the charge, I mean, of having acted with oppressive rigour towards the state institutions. I am glad the committee have cleared away this ground of accusation. At most, however, it proves only a *mistake*; a mistake on the *right side*, and a mistake that was almost inevitable. To bring about the payment of specie, within any reasonable period, and at the same time to avoid a severe pressure upon the state banks, and through them upon the community, it was indispensably necessary to treat those banks with the most indulgent liberality, wherever they manifested a sincere intention to return to the payment of specie. This was the inducement to the compact of the 31st January, 1817. Without such indulgence, the paper of the United States Bank, and that of the state banks, could not have circulated together. A good and a bad currency, or, if you please, a good and a better currency can never associate in circulation. They must associate upon terms of equality, or approaching to equality, or they cannot associate at all. The continental money banished gold and silver. When assignats were used in France, specie disappeared. When, by excessive issues, or from whatever other cause, the state bank paper was depreciated, coin was no longer used. Where paper is now, from the same cause, depreciated, (as in some parts of the western country,) gold and silver or notes of the Bank of the United States, equivalent to gold and silver, are not to be found. They will not be found there, until either the better currency shall obtain the entire ascendancy, by ban-



ishing the state bank paper from circulation, or, by a removal of the causes that have occasioned depreciation, the latter shall be restored to an equality in value with the former, which is on every account most to be desired.

The next subject of complaint and censure is the resolution of the 28th November, 1816, for paying the dividends of foreign stockholders in London, at the par of exchange. (Report, page 8—9.) I shall assume, for the purpose of treating this subject, a single maxim of justice, which every man will assent to as the only fair and reasonable rule of human judgment. It is, that, where an act is right in itself, the motives or reasons are not to be inquired into as a ground of crimination. They may strip the act of its claim to merit, but they can never expose it to criminal imputation. Charity, indeed, common charity, between man and man, that which the infirmity of our nature demands to be continually exercised towards each other, adopts and applies a much more comprehensive and benevolent rule—that even where the act is wrong, yet it may be exempt from censure, if the motives were just and good. Sir, without deciding whether that resolution was right or wrong in itself, and admitting that it was one of those “general and abstract subjects to which the resolution of the house did not direct their attention,” the report condemns it as a measure adopted with a view to speculation, that is, upon what they suppose to have been bad motives. It is true, they take, also, another ground, which I will examine presently, namely, the *possible* loss to the American stockholders and government. But they do not deny, and I think they most clearly admit, that the directors had a right to make the arrangement.

If it had been the policy of Congress to prevent foreigners from becoming stockholders in the bank, they would have expressed it by a prohibition in the charter. The matter was not overlooked; it was considered and discussed in this house, when the law was passed. If it was the

policy of Congress to permit foreigners to become proprietors of the stock—and certainly the refusal to prohibit amounted to an invitation—would the directors have been justified in adopting measures to thwart and counteract that policy? It was their duty to execute the law in its spirit, to effectuate its intentions, to subserve, and not to defeat the policy of the government. If, substituting their own conceptions of what was politic, for the rule given to them by the law, they had pursued a different system, they would have made themselves justly obnoxious to censure and reproach. Now, sir, the resolution in question had two objects—1. The payment, in London, of the dividends to foreign stockholders: 2. The payment *at the par of exchange*. The first of these the report does not much object to. It was done by the late Bank of the United States, as to its own dividends. That bank also remitted to foreigners their interest upon the public debt of the United States, I believe, free of charge. This is powerful evidence that it was advantageous to the institution, for now that the whole history of the late bank is before us, its life and its death, I suppose no one will deny that it was very fairly and skilfully managed. We have the example too, of the government, in the instances of the French and Dutch loans. Why was the interest stipulated to be paid abroad? Because it was favourable to the credit of the country; it enabled the government to obtain loans which it could not otherwise have had, or to obtain them upon better terms. The mere convenience to the stockholder, the freedom from risk and from the charges of receipt and remittance, when he has his interest sent to him, instead of being obliged to send after it, is a consideration of great moment—the same consideration which induces an individual to invest his money near to where he lives, though he might make a greater profit by investing it further off. Such an operation, however, was inconvenient to the government; because it was not within the ordinary range of fiscal ma-

nagement; and, therefore, the government proposed to exchange the foreign debt for a debt bearing interest, payable in the United States. As an inducement, they offered to increase the annual interest one half of one per cent. France accepted the offer; the Dutch refused it, estimating the convenience of receiving their interest at home at more than the annual one half of one per cent. Such an operation, though inconvenient and burdensome to the government, is precisely adapted to the transactions of a bank, authorized by its charter to deal in exchange, and having established arrangements and credits for that purpose. It can remit and pay abroad with as much facility as it can pay at home. To my mind, therefore, it seems, that the measure, so far as regards the payment abroad, was not only justified by experience, by example, and by sound calculation, but, that the neglect of it would have betrayed ignorance, and want of foresight. I might instance, also, the Louisiana debt, which was taken by a single individual, or a single house, and sold at a profit by stipulating to pay the interest abroad. The second part of the resolution regards the rate at which the bank would engage to remit, and at which the stockholders would stipulate to receive the remittance of their dividends. For, we must recollect that it was a mutual contract, binding upon both parties. The bank would pay abroad upon no other terms but those which were prescribed. It cannot be denied that the directors had a right to arrange the terms. Dealing in exchange is one of their legitimate powers, expressly given by the charter, and as there is nothing which restricts them to successive, unconnected instances, there can be no valid objection to such an exercise of the authority as is now the subject of discussion. There can be no doubt, therefore, of their right to "compel the American stockholders to contribute to the possible loss" (Report, page 8) upon exchange operations; and there can be none of its expediency and propriety, provided there was a well grounded probability of profit in-

stead of loss. The directors had before them the experience of the past. From two tables before me, I can say, that, from the year 1791 to the year 1817, inclusive, the average of exchange has been greatly in favour of this country. The first of these is a statement from the treasury of the annual gain and loss upon remittances for payment of the Dutch loan, from 1791 to 1809. The gain is \$409,197 20; the loss is \$103,377 06. The clear gain upon the whole of the remittances is \$305,820 14.—(B) The other is a statement of the annual gain and loss by exchange, under the operations of the commissioners of the sinking fund. There is an uninterrupted annual gain, amounting, altogether, to \$482,361 20, with only an *apparent* exception in the years 1815 and 1816. The exception is only *apparent*, for it was owing, not to the state of exchange, but to the depreciation of the currency with which the bills were bought. At the very time (and it is a convincing proof) exchange in Boston, where a sound currency was maintained, was at or about par. Deduct those two years, (\$129,640 66) there is still a total gain of \$352,720 54—(C.) As far as the past can afford us any light to look into the future, this exhibition might be relied upon. It was not of a year or years, but an unbroken series of six and twenty years in succession. It was not of a period of uniform character, either favourable or unfavourable. It embraced the infancy of our government, the arrangement of our finances, years of prosperous commerce, and years when commerce was oppressed by formidable restrictions and impositions abroad, and by prohibitions and embargoes at home. It embraced a long period of peace, and a short period of war, (a proportion which I hope our history may always present)—it embraced, in short, exactly such a variety of circumstances, as, in the ordinary course of events, may be expected to happen, and, for that very reason, exactly such a period as a prudent man would select for the basis of his calculation. Experience, since, I am informed,

has given its sanction to the measure. I do not know the fact, but I am told there has been a gain upon exchange. The committee of directors, who reported against the measure—who are complimented, and deservedly, too, for their able reasons, were, upon general grounds, in favour of it, as the report will show; and gave very “able reasons,” the same which finally decided the board to adopt it, namely, “the effect which it would have in reducing the rate of exchange, by inducing capitalists to invest their funds in the stock, and thereby facilitating the resumption of specie payments.” They were deterred by then existing circumstances, which are now proved to have been temporary; and probably, among others, by the doubt, whether a sound currency could or would be very speedily restored. The remittance of the dividends they recommended without qualification. We are to recollect, also, that one of the terms of the compact was a delay of six months. The January dividend was to be paid in the following July, and the July dividend in January. Supposing three months necessary for making the remittance—there would remain three months, during which the bank might have the use of the money, equal at least to one and a half per cent.; and during which, too, the bank would have the range for selecting the most favourable moment to buy exchange. Its range for selection would, indeed, be much more extensive—it would be almost unlimited; for, as it was authorized to deal in exchanges, it would always have funds or credit abroad, to be applied or drawn upon, according to the state of the market for bills.

If this measure were right to be adopted at all, it was right to be adopted at that time, and precisely for the reason assigned in the letter of Mr. Donnel. If foreigners were to become the owners of stock, it was for the interest of the American stockholder, as well as for the interest of the nation, that the rise should take place before they became purchasers, rather than afterwards. This is a proposition no

one will be inclined to dispute, and of course it cannot, with any colour of reason, be denied, that if measures were in the contemplation of the directors, which would have a tendency to enhance the value of the stock, they were bound in duty to adopt them, in the early part of the institution, so that the American stockholder might have the benefit of the rise, and not the foreigner; and the nation thus have the advantage of the increase of the exchangeable or market value of the stock. The prospect of an enhancement of price was itself an equivalent to the American stockholder for any possible loss on exchange. But while I agree that paying the dividends in England (which is not objected to) was calculated to raise the price of the stock, for the reasons before stated, I am not satisfied that paying at the par of exchange would necessarily have that effect. If it were likely to be advantageous to the bank, (as I believe it was,) it was for the same reason likely to be disadvantageous to the foreign stockholder. What the one gained on exchange the other would lose. The materials for calculation were as open to the one as to the other. The report seems to suppose, that it would raise the market in England, and that the rise there would operate upon the market here. The reasoning is incorrect—because, it looks only at one side of the question. We may affirm, with equal truth, that, if it was disadvantageous to the American stockholder, it would depress the market here, and that depression would affect the market in England. The market abroad, for our stocks, is regulated by our own, rather than our own by the foreign; though, doubtless, they do somewhat affect each other. The only question, however, at last, is the one which I have before stated, and I hope, satisfactorily answered—was there a reasonable prospect of gain from this arrangement? But the gentleman from Virginia, who was one of the select committee, (Mr. Tyler,) has advanced an opinion, not the less extraordinary and unexpected for the explanation of it given by the chairman. He thinks that even

if there were a gain, it would not increase the dividends of the American stockholder, because, if I understand him correctly, the remittance would not be made till *after* the dividend, and the loss or gain would not till then be ascertained. What then does he suppose would become of the gain? Would it not go into the general profits of the bank? He did not recollect, that, though the remittance would follow one dividend, it would precede another, through the whole term of the charter. It might with equal correctness be affirmed, and for the same reason, that the dividend could not be diminished by a loss on exchange, and then, I suppose, we should arrive at a result exactly right, that the dividends would neither be increased nor diminished. A moment's reflection will convince him of his error. And now, sir, I may be allowed to ask, whether this arrangement is not what every man would have made in his own case? Is it not what every merchant does, habitually, and every planter too? Why, then, should we impute it to unworthy motives?

Another, and a heavier charge, in the estimation of the report, is that which relates to loans on the deposit or pledge of stock of the bank. It is not disputed, and it cannot be disputed, that the directors had a right to lend on any sort of personal security not prohibited by the charter. It is equally beyond dispute, that the stock was a good security. The gentleman from South Carolina (Mr. Lowndes,) has stated, and the gentleman from Virginia has agreed, that in the event of a dissolution, the stock loans at par would settle themselves. If that be so, the security is unexceptionable. It is demonstrable, further, that, under the circumstances, the loans on stock were judicious, and for the interest of the institution. These loans did not originate in occasional resolutions; they had their origin in the fourth of the by-laws, adopted before the bank went into operation, in the month of December, 1816. The by-law is referred to in the report. There were vices in the banking system, as it was

then commonly conducted, which the directors of the Bank of the United States were anxious, as far as possible, to correct. Among them was the use of accommodation, or "credit the drawer" paper. Another, and a very serious one, was the extensive practice of mutual endorsements. A man who wished to get a discount, was obliged to borrow the name of a friend, and, by borrowing, came under a well understood obligation to lend his own name in return. A connexion was thus formed involving both in the fate of either. If one failed, he dragged the other after him; and, indeed, it often happened, that, by multiplied entanglements of this sort, the ruin of one man injured, perhaps destroyed, the credit of many. The fourth by-law was intended, and honestly and prudently intended, to diminish these evils. It provided that accommodation paper should not be discounted; and, to limit, as much as practicable, the evil of mutual endorsements, it invited persons applying for discounts to deposite personal security instead of endorsers. The subsequent resolutions of the board, (excepting that of the 25th August, 1817, which shall be distinctly considered) were evidently adopted only to carry the fundamental by-law into execution, by extending it to the branches, and by declaring the rates and other terms upon which the several kinds of stock should be received in pledge or deposite. They are thus, by a very obvious reference to the original source, freed from the suspicion of having been produced by occasional motives of speculation, and placed upon their true foundation—which no one, I think, will deny, is solid enough to sustain them. Such was the character of the resolutions of the 18th December, 1816, (Documents, page 65) and of the 25th July, 1817, (page ) The resolution of the 25th August, 1817, authorized the loan of 125, upon stock, with two approved endorsers, who, as the report explains it, were only to be security for the 25 per cent. excess beyond the par value of the stock deposited. This resolution, I have no hesitation to say, I do



not approve, for reasons, however, very different from those stated in the report. Sir, the directors themselves did not long approve it. The resolution was acted upon but a very short time, not more than a week or ten days, and the amount loaned under it appears, from the documents, to have been very small. Let us now, for a moment, examine the operation of these measures. The amount of discounts on stock, remaining unpaid on the 30th July, 1817, was \$5,221,267 60—(Documents, page 60.) The total amount of discounts, then, was \$25,770,120 59. So that there was loaned on personal security about \$20,000,000, and on stock about \$5,000,000, which no one can affirm to have been an undue proportion. If the original by-law, and the resolutions made in pursuance of it, were right, there was now additional motive for desiring to extend their operation—that is, to increase the loans on stock. It was originally designed, as I have already stated, that the capital of the bank should be composed in part of public debt, bearing interest, and to be gradually converted into active capital. The whole of it, exceeding thirteen millions, and including two millions which the bank had endeavoured to convert into specie, for the benefit of the country, was redeemed at par on the 31st July, 1817, and in place of it thirteen millions of money were thrown into the bank, for which the directors were to find employment. If they were desirous to place a part of it in loans upon stock—upon a good security, bearing some resemblance to that which had thus been taken from them, rather than hazard it all at once upon personal security, it was a natural, a prudent, and a commendable desire, and it was in precise conformity with the original plan of the bank, as well as with the “gradual extension,” which the report, in one part, thinks was expedient. It was a desire, nevertheless, however prudent, not likely to be gratified. The stock was then rising, and had reached somewhere about 140, as appears from the table of prices exhibited by the committee. They were not to ex-

pect stock to be deposited at par, when its market price was 140. On the contrary, with a rising market, there would be a constant tendency to escape from the deposit, and to disappoint the wish of the directors, which was to increase, and not to diminish, this kind of security. It was under the influence of views like these, I should suppose, (as stated by the late president, in his examination, among the documents) that the resolution of the 26th of August, 1817, was adopted, combining the two kinds of loan—on personal security, and on stock—in order to increase the quantity of the latter. I repeat that I do not approve of this resolution, and for this simple reason—that as, in the discounts upon stock, they regarded only the security, and not the person, or the amount, I do not see how the two kinds of loan could thus be combined, without the temptation to lend more to individuals upon the personal security, than was either prudent or proper; inasmuch as the loan upon the personal security was always to bear a fixed proportion to what was considered as lent upon the stock. But the question is, whether it was sincerely adopted, for the reasons given, and not to promote a scheme of stockjobbing. The board soon put an end to its active existence, which must be regarded as some evidence, at least, of sincerity.

What are the objections made to this kind of discounts? Not that they were insecure and imprudent, or unprofitable. No. To the whole of the loans on stock it is objected, that they inflated the price of the stock, in the language of the report, “kept it constantly advancing, until it reached a point where it exploded and fell.” (page 11.) The first point to be established, in order to support this position, is, that the stock ever has been inflated beyond its real value. What is its real value? Sir, it is (within certain limits) matter of opinion, matter of conjecture, depending upon a thousand considerations, and, among the rest, at the present moment, depending upon the decision of this house. What will it rise to hereafter? No one can tell. It is an institution of

great resources, calculated, I believe, if supported by the public confidence, to be a blessing to this nation—in peace a bond of union, a sinew of strength in war. But what at any given time will be the price of its stock, I will not venture to predict. Have purchasers been injured? That, depends upon what the price will come to hereafter. But, though I will not undertake to answer either of these questions, nor hazard any opinion upon the value of the stock, yet, in justice to the bank, I will venture to say, that, as far as my knowledge extends, there never was any great moneyed institution established, there never was any great moneyed operation commenced, that produced so little speculation. I do not advance this hastily, and I do not wish it to be assented to without full reflection. Speculation—stockjobbing—these are the substance of all the charges, or the colouring spread over them all. Where is the instance of a new institution, in which there was so much steadiness, so little extravagant speculation? The maximum of the price of its stock (see Table among the documents) was in the latter part of August, 1817, when it had gradually reached 56 per cent. advance. Do gentlemen recollect, or have they heard, what happened when the public debt was funded? One would suppose that nothing could have been less fit to occasion speculation. The amount was fixed, and could not be exceeded, the rate of interest was fixed at the current rate of the country, the period and manner of redemption were also fixed, every thing, in short, was reduced to the greatest possible certainty—yet the six per cent. stock rose to twenty-six shillings and threepence. It afterwards fell, considerably below par, and did not recover till I think after the year 1803. We have another, and a much more striking instance in the establishment of the late bank of the United States. The scrip for which ten dollars had been paid, and no more, rose to two hundred and seventy dollars. Fortunes were made and lost. The roads between the commercial cities are represented to

have been covered with expresses, conveying intelligence of the fluctuations of the market, in order that they might be advantageously seized. The stock of that bank I have been informed, but do not speak positively, afterwards fell below par. Sir, I have seen many moneyed institutions established, and though I have had little to do with them, I have nevertheless had occasion to observe their usual progress. Their history is nearly the same. At first, their stock has an extravagant rise, then succeeds an equally extravagant depression, and afterwards it finds what may be termed its just or natural level, that is, the level at, or near to which it rests, unless disturbed by some extraordinary occurrence, or moderately advanced by a gradual improvement. The stock of the late bank of the United States may be considered as having settled at about 50 advance, after all speculation had ceased. In the year 1802 the United States sold 2220 shares at 45 advance, and they sold to a person who bought to sell again, and of course to sell at a profit. I have always understood that he did sell at a profit. Individuals sold as high as 50 advance. (Seybert's Stat. An.) The permanent advance, therefore, was very little short of what has been deemed the inflated or speculation price of the present bank. I am aware that it may be said, and truly said, that the late bank had some advantages which the present does not possess. But the existing bank has also some which were not possessed by the former. At the period we are speaking of, when its stock rose to 56, it had this most striking advantage, that not a year of its charter had expired, and there were above nineteen years remaining, whereas, when the stock of the late bank was at 50, eleven years had run out and only nine remained. This inflated price, therefore, was very little higher than the level, stationary price of the stock of the late bank of the United States.

It is not correct to say that it "exploded and fell." (Report, page 11.) Allowing all reasonable indulgence to the

figure, it means, if I understand it, that the price was suddenly precipitated, when the artificial means used for its elevation had ceased to operate, or ceased to produce any effect. It is not correct. The table of prices annexed to the report of the committee shows, that its decline was gradual, and that decline can be traced to other causes, which I will advert to presently. The price was highest in August, 1817: it began to fall, but not materially, in September, 1817—and it had not arrived at the lowest point of depression, (110), what in the table is called “the lowest price,” till November and December, 1818, more than a year after the depression began. The Table does not give us the intermediate prices, but we know, from other sources, that the decline was not considerable during the first part of that period. It may be dated, chiefly, from the summer of 1818, and may be traced to causes which not only had no connexion with artificial means, but are wholly inconsistent with their use.

Again, sir, let us examine in another point of view these charges against the loans upon stock.

The price on the 20th of August, 1817, was from 144 to 147, to which it had gradually attained. How could successive, repeated advancements of price be owing to a resolution adopted before the organization of the bank, permanent in its nature, and operating uniformly from the first adoption? There is some confusion in the treatment of this part of the subject. One would be led by the language of the report, to suppose, that there were successive measures brought forward from time to time, and calculated continually to stimulate the market, which was stimulated accordingly. The fact is not so. It was a system—the foundation was laid in the 4th by-law, and the subsequent resolutions, all conformable to that by-law, were merely executive or ministerial, to carry it into effect. The committee have themselves furnished the most conclusive evidence that the supposed facilities for obtaining money were not so eagerly seized upon, and for that very reason not calculated

to produce the effect imputed. The amount loaned upon stock, prior to the 30th of July, 1817, had been as high as \$ 8,046,932 64. It was at that time only 5,221,267 60. (Documents page 70.) Of course, 2,815,665 04 had then been redeemed and withdrawn, voluntarily, as respects the borrowers, and against the policy and the true interests of the bank. The bank could not lend in this way as much as it might prudently desire. This statement is what I alluded to, when I said some time ago that there was a continual tendency in the deposite to escape. That the resolution of the 26th of August (for advancing \$ 125) had no influence in raising the price is most evident. On that day it was at 150, nearly the maximum; it rose but very little in the next three or four days, and then, instead of rising, began to decline.

But this resolution is supposed by the report (page 11) "to have given equal facilities to the bankrupt who had not credit enough to *obtain an endorser*, and to the capitalist. Stock, it is said, could be and was purchased without the *advance of a cent* by the purchaser, who had only to apply to the directors, or to the President and Cashier, between discount days, for a loan on the shares about to be bought, and by what is termed a simultaneous operation, he *obtained his discount*, and WITH IT paid for his stock. A rise in the market would enable him to sell his shares, pocket the difference, and *commence operations anew*." Nothing can be more inaccurate, more strikingly inaccurate than the whole of this reasoning; and nothing more destitute of solid support than the hasty condemnation founded upon it. It fails, entirely, in point of fact. For, in the first place, the price of stock, on the 26th of August, 1817, was 150. A loan could be obtained upon it of only 125. There remained, therefore, 25 dollars a share to be supplied from the resources of the purchaser. Again: For the 25 dollars excess beyond the par value of the share, "*two approved names*" were required, (Documents 79.) Thus the bor-

power was to find an "*approved*" endorser, and was to furnish 25 dollars a share in addition to what the bank would lend him. How, then, can it be affirmed, that this resolution "gave facilities to the bankrupt, who had not *credit enough to obtain an endorser?*" How can it be said, that by means of it stock could "be purchased *without the advance of a cent?*" Or, that, with the money obtained from the bank, the purchaser "could pay for his stock?" [Here, Mr. Spencer rose to explain, and stated that the reasoning quoted from the report was not meant to apply to the resolution of the 26th of August, but to the previous resolutions authorizing loans at par.] Sir, the reasoning immediately follows the statement of the resolution of the 26th of August, and seems to be most especially, if not exclusively, applied to that resolution. But I accept the chairman's explanation, and will the reasoning be any better? Rather worse I think. Under the resolution of the 26th of August, the purchaser was to furnish 25 dollars a share, in money, and an endorser for 25 dollars more. Under the resolutions for loaning at par, he would have to advance 50 dollars a share, (150 being the market price) which I suppose would be at least as difficult for "a bankrupt," and quite as inconsistent with the idea of buying "without the advance of a cent," as advancing 25 dollars, and finding an endorser for 25 more.

While I am upon this part of the subject, I would take the liberty of asking a question of the chairman of the select committee. The report (page 11) says that "a rise in the market would enable him (the purchaser) to sell his shares, pocket the difference, and commence operations anew." I should be glad to be informed, how many times a man must commence *such operations* anew, how many times he must buy and sell in a market "constantly advancing," before he will make a profit? If the market was "*constantly advancing*," as the report states it was, it would seem to me very difficult to understand how succe-

sive operations could benefit the speculator. I should suppose, from a plain calculation, that the oftener he bought and sold, the less stock he would have, and, repeating the "operation" a sufficient number of times, and a slight depression supervening, he would inevitably lose his whole capital.

The report, sir, goes on to charge that the loans were "unreasonable and excessive," were not made "to merchants and traders," but "to a few persons, consisting of "directors, brokers, and speculators," and that very little "good business paper was done." (Report 10, 11.) Upon what foundation of fact these charges rest, we are not precisely informed. The members of the committee have referred to a list of borrowers which has not been printed, and they have differed from each other as to the true purport of that list. The member from South Carolina, (Mr. Lowndes,) one of the committee, has stated that a large proportion of the borrowers were "merchants and traders." It is of no manner of consequence, for it is not denied, but it is agreed, that these loans were offered indiscriminately to all who could give the required security—that they were made with impartiality, and without favouritism—and that, in making them, the directors did not regard the *occupation* of the borrower, provided he offered good security. Was not the security unexceptionably good—the best that could be offered? Suppose these same "speculators" had got discounts on funded debt, would there then be any complaint? Where then is the point of this accusation? Do gentlemen mean to establish a high moral standard, graduated not by the laws of the land, nor with any reference to the nature of the subject, by which the directors of the bank are to be governed in exercising a censorial authority over the lives and occupations of those who come to borrow, and by which they are themselves in turn to be tried and censured? We are all of us fond of power, and sufficiently inclined to abuse it. What power could be more dangerous, what more liable to abuse, what more inevita-



bly tending to generate a tyrannical spirit in the heart of man, than such an authority—no matter by whom exercised—to become a censor and inquisitor of the thoughts and occupations and conduct of his fellow creatures; to judge them, not by the laws of the land, nor by any defined or established rule, but by an arbitrary and fanciful theory of his own creation? Sir, is it not enough that these loans were not prejudicial to the interests of the institution, that the security was unexceptionable, that they were impartial and general? Is it not enough that there were at least very plausible reasons, if not conclusive ones, for making them? Is it not enough, that they were prohibited by no law, and that they were made by the directors under a discretion committed to them? That they are still safe and good? That they were made to persons exercising occupations not forbidden by law, who were not prohibited from borrowing, and to whom it was not unlawful to lend? If they were right in themselves, let us not engage in needless inquiries, that can do no possible good, and may do much mischief.

But the report expresses surprise “at finding so little *good business paper done at the bank and its offices.*” How, in the course of such an examination, (completed in three weeks) it was ascertained what quantity of “business paper,” usually so called, was done at the “bank and its offices,” or what “good” business paper was done, or whether any was done that was *bad*, or whether any good or bad was refused, and for what reasons, I am at a loss to understand; especially as there was no opportunity for explanation. I take it for granted, from other parts of the report, that this phrase is meant to apply, though applied inaccurately, to loans on stock, as contradistinguished from loans on personal security. In that sense, without admitting our right to regulate the business of discounts—in that sense, the surprise expressed appears to be unwarranted. When the loans on personal security were \$20,000,000, the loans on stock were \$5,000,000. When the loans on

personal security were \$90,000,000, the loans on stock were \$11,000,000; and that proportion never was exceeded. (See documents page 70, and table 43.)

There is still another accusation, which I have heard here and elsewhere, and which, for that reason, I have been at some pains to examine. The "curtailment," (says the report, page 11) "fell, in almost all cases, upon the business paper;" by which is here meant the paper for loans on personal security. The table 43 furnishes a most conclusive answer to this allegation.

The greatest amount loaned on stock appears to have been in January and February, 1818,      \$ 11,344,514 19

In November, 1818, it was reduced to      8,934,712 94

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Reduction      \$2,309,801 25

The greatest amount loaned on personal security, was in March and April, 1818,      \$ 30,318,932 50

In November, 1818, it was reduced to      26,989,992 12

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Reduction      \$ 3,328,940 38

The reduction on stock is beyond all proportion greater than on the personal security paper.

Take another period—that given by the committee.

In July, 1818, the loans on stock were, \$10,657,125 85

November, 1818,      8,934,712 94

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Reduction      \$ 1,722,412 91

In July, 1818, loans on personal security, \$28,836,670 28

November, 1818,      26,989,992 12

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Reduction,      \$ 1,846,678 16

There is another period stated, (June and July) which gives a result somewhat different, but still shows the stock loans to have been more than proportionably reduced. The first, however, is most fair, as it gives a reasonable range.

I have gone into these details, sir, not for the mere purpose of differing from the committee, or pointing out inaccuracies in the report, but to avoid hasty results, from a

superficial examination. The conclusion, so far as we have gone, is, that the inferences are not warranted. Every measure is fairly accounted for, provided you examine it upon its own merits, free from the prejudice of extrinsic considerations. I shall trouble you no more with particulars that must, necessarily, be tedious and uninteresting. There is one allegation of the report, however, which the chairman has voluntarily corrected, admitting that the language is broader than he meant it to be. It is the assertion, in page 10, that "the principal business of the bank certainly has been to discount on notes *secured by a pledge of stock*;" an assertion which, as it stands in the report, did certainly occasion some astonishment. It is now explained to be meant only of the operations at Philadelphia. We have no table that shows how much of each kind of paper was done at Philadelphia, and, therefore, cannot fix with any precision what is to be understood by this vague expression, "the principal business." But, is it not easy to account, and to account fairly, too, for the fact, supposing it to be as stated? The largest loans on stock would naturally be where the largest quantity of stock was held, and where there was most of that kind of security to offer. The largest loans were accordingly at Philadelphia and Baltimore. The list of subscriptions to the bank (No. 47) gives us the following: At Philadelphia 88,520 shares; at Baltimore 40,141; at New-York 20,012; at Boston 24,023. It is worth remarking, though not directly applicable to the present purpose, that at Charleston there were 25,986 shares subscribed, more than either at New-York or Boston. At Richmond, 16,987 shares; at Washington 12,708; and at Lexington, Kentucky, 9,587, nearly half as many as at New-York. I would remark, further, with regard to the loans on stock at Philadelphia, that they were not confined to stockholders in Philadelphia, but a considerable *portion* of them was for persons residing in different parts of the Union, who, from some cause or other, found it most con-

venient to get their loans there. This is a fact well known to the committee, from whom indeed I have derived it.

But the heaviest charge of all, in the estimation of the report—that which pervades and gives a colour to the whole, at the same time that it is of no manner of importance in the present inquiry—is the charge of speculation made against individual directors and officers of the institution. How far it may be justifiable or proper thus to scrutinize the private transactions of men, in order to fasten upon them, by an *ex parte* inquiry, the imputation of an undefined and undefinable offence—to hold them up to public odium, under the authoritative sanction of a committee of this house—it would be useless now to inquire. Speculation and speculators, sir, are terms of very vague import, and of very extensive application. There are speculators of many kinds—there are speculators in lands—there are speculators in merchandise—there are speculators in manufactures—there are speculators in stocks; the variety is infinite, and in no country upon earth greater than in this. Every thing about us invites to speculation. Such are the resources, such the youthful energy of our happy country, that a man can scarcely apply his labour or his money amiss; wherever he employs them he is sure of a liberal and rapid increase. Not an axe sounds in the forest, without adding to the sum of national wealth. I should like, then, to know, in what the discrimination consists, which makes one kind of speculation offensive, and another innocent, if both are permitted by law, and neither unfairly or fraudulently conducted. What is the difference between speculating in land, and speculating in merchandise, or the stocks? Sir, the charter does not prohibit dealing in the stocks, either to directors, or to the officers of the institution; it is, therefore, not unlawful or criminal. The omission, with respect to the officers, cannot have been casual, or accidental. If my recollection be accurate—I do not speak positively—it was prohibited, as well as every other kind of trading, to

the officers in the late Bank of the United States. I know it is prohibited by law in most of the state institutions. It is impossible that it should have escaped the attention of Congress.—But let us examine this matter, and not be carried away by general denunciation. That a man might subscribe, and yet be a director, is not to be questioned; none but a subscriber could be a director. Every subscription had a view to profit or advantage, and was so far a speculation. Large subscription in general had a view to profit, by selling, and the larger the subscription, the greater speculator was the subscriber, and the more was he interested in advancing the value and price of the stock. Was he, on that account, incapacitated to be a director? On the contrary, was it not thought, and with some appearance, at least, of reason, that the greater his stake in the institution, the more he would feel interested in its prosperity? Again—the committee, adopting a distinction I do not very well understand, find no fault with a director for buying, or for selling. And yet, is it not most obvious, that the one operation would make it his interest to depress, and the other to raise the price; that in the one case he might buy as cheap, and in the other sell as dear as possible? The whole censure of the report is directed against those who bought *and* sold—who dealt in the stock. It would be very difficult to make out that one who thus dealt in buying and selling, was more likely to be affected by it in his conduct as a director, than one who only bought, or one who only sold. On the contrary, as his interest would be sometimes on one side, and sometimes on the other, he would be less likely to be permanently influenced, or influenced at all. But this is, itself, mere matter of *speculation*, and speculation of the most dangerous sort; because it subjects the conduct of men to speculative examination, and to speculative conviction. It is a *speculation* upon character, where there ought to be, and where there is a plain practical rule which will be sure to guide us to a safe result. Upon this part of

the subject I wish to be clearly understood. The rule a man may think proper to lay down for the *government* of his own conduct, is one thing; the rule he will adopt in judging the conduct of others, is another. In fixing a standard for his own government, it matters little how high he may raise it—if he aim at all the perfections contained in the table of the illustrious Franklin, so much the better. Should he fail, as he assuredly will, of reaching the highest point, he will nevertheless be rewarded for his pains. He will promote his own happiness, and, from the difficulties he has to struggle with, he will learn a lesson of charity towards others, which increased contentment with himself, at every step of his progress, will every day more and more qualify him to practise. But, when a man undertakes to judge the conduct of others, let him beware how he applies to it a severer rule than the law of the land and the law of their peculiar condition have laid down. Sir, I know nothing, by experience, of speculation. I have never dealt in the stock of this bank. I have never bought a share, nor sold a share, nor been interested in the purchase or sale of a share. I have never borrowed a dollar from the bank. But I claim no credit for forbearance. When I am here, endeavouring to serve my constituents, according to the humble measure of my abilities, I am engaged in the labours of a profession which do not consist with engagements in trade, or dealing, or speculating, or borrowing. These are no part of my business, and whether I abstain from them because I think it prudent, or because I think it right—from motives of policy, or from motives of a higher nature—is altogether indifferent. I choose to abstain from them, and no one has any right to inquire why I do so. I acknowledge that I should be wanting in consistency of character, and might be justly exposed to suspicion, if, upon becoming a bank director, I were to abandon my former habits and occupations, and become a dealer in money and in stock. But, if you make directors of men whose daily business and oc-

cupation it is to trade, to buy and to sell, to deal in stocks and in money, (and such men are not proscribed, they are indeed the very men who are deemed best qualified to be directors)—do you expect them thenceforth, to give up their occupations, to purify themselves from the love and desire of gain, in order that they may be qualified for the due performance of the trust, or escape the charge of being speculators and stockjobbers? It is idle to talk of it. Nobody expects it, nor do I know that it is to be wished. If there is any evil experienced, the stockholders have power to correct it by election, or by by-law. But, for the present purpose, there is a plain practical rule upon this subject, safe and sure in its application. Has all this imputed speculation affected prejudicially the interests and management of the bank? If the trust has been betrayed, if the bank has been mismanaged towards the public, and the property of the stockholders sacrificed to subserve the purposes of speculation, let condemnation fall with its heaviest weight upon those who have abused the confidence reposed in them. This is the question, if there be any question to discuss, respecting the management of the bank. To this question I have endeavoured to draw the attention of the house; and if the views I have presented be at all correct, I think it has been fully and satisfactorily answered.

Justice to those who have had the direction of the bank requires a few words more. You have, it seems to me, the strongest positive evidence of the sincerity of the directors, and of their confidence in the administration of the bank. Did they sell out before the fall of price took place? With only one exception I believe, (any member of the committee can correct me if I am in error,) with one single exception, the directors, who are charged with speculation, held, and continued to hold, at that very time, quite as large, if not a larger quantity of stock, than they had held at any antecedent period; thus resting their own hopes and fortunes upon the stability of their measures. Again—the

fall of price itself was owing to their own acts of management—acts necessary and proper, but which they must have foreseen, would unavoidably depress the market. We know full well that it is the rate of dividend which chiefly regulates the permanent price of every stock. Did they ever make an unjustifiable dividend? It is not pretended. The first serious impression made upon the market, was by the reduced dividend of three and a half per cent. in July last. I say *reduced*, in comparison with the former dividends, which had been four per cent. That affected the stock. Then came the change in the character of the branch notes, which occasioned some uneasiness, and much unfounded clamour. At the same time there was a rapid reduction of discounts, which had the double effect of lessening the prospect of dividends, and of diminishing the quantity of money in circulation; both calculated to lower the price of stock. These were measures necessary and proper for the security and safety of the institution, now approved by every one—but they were all measures most obviously unfavourable to the market. They were adopted, and persevered in by the directors, because they were necessary and proper, thus giving to the public and the stockholders the surest pledge of their fidelity to the trust, and of their determination to prefer it to any interests of their own.

Of the officers of the institution, it would be sufficient to say, that neither the law nor the stockholders restrained them from trading, and there is no reason to believe that they have in any instance neglected or betrayed their duty. In what I have heretofore submitted to the house, I have founded myself almost exclusively upon the documents furnished by the committee. On this point, will the house permit me to say one word from my own personal knowledge? Sir, I have had full opportunity to observe the conduct of the late president, (Mr. Jones,) and I can assure the house that I believe no institution ever had a more honest, zealous, and devoted officer. He has sacrificed his health



in its service, by incessant and laborious exertions to promote its prosperity, which seemed, indeed, to be the only object of his thoughts and cares. I know not who may be placed hereafter at the head of the bank, nor will I pretend to enter into any comparison of other qualifications; but I am sure that I can wish it nothing better than that all its future presidents may be as faithful, as honest, as industrious, and devoted, as their late President.

It is time to come to a conclusion of what relates to the management of the bank. Can I ask more to sum up the evidence of its fidelity, than the statement of the gentleman from Virginia, (Mr. Tyler,) that if dissolved it is now able to pay dollar for dollar?

That there have been some errors cannot be doubted, but they have been mere errors, such as all men are liable to, and they have always been on the right side. Among them, however, I do not consider the practice of selling drafts to be one. It is the right of the bank, admitted to be so in the report, (page 5.) It is perfectly fair, and one of the most legitimate sources of profit, inasmuch as it is expressly indicated in the charter. Upon what principle, I would ask, is it, that what an individual may do without reproach, is not to be done by the bank? Why, having a fair marketable commodity to dispose of, shall it not sell at the fair market price? Why should it not in this respect be put upon an equal footing with individuals? Until these questions are answered, it is unnecessary to say any thing further. A premium or advance is an indemnity for the remittance of funds, varying a little, according to circumstances. Ought the bank to remit the funds of individuals at its own expense? It would be unjust as respects the bank; it would be objectionable as regards the community; for it would open the door for favouritism and partiality. A fixed rate (which the report page 5 thinks ought always to be observed) is plainly impracticable. But of this, I need say no more. It is now settled upon its just foundation; it

is the right of the bank, and does no wrong to any one, as no man is obliged to buy from the bank, or sell to the bank, but makes the bargain voluntarily and for his own convenience. I am confident, however, that what the report says, in page 5, of the fluctuation from one to five per cent. is incorrect. It must be a mistake.

I forbear to trespass further on the patience of the committee upon this part of the subject, and proceed at once to the second general ground of inquiry.

Has the charter been violated so as to work a forfeiture? This single question would afford materials for a very copious discussion, much more copious than I am disposed to undertake, after having already taken up so much of your time. I would address myself first to those gentlemen who hold the opinion that Congress have no constitutional power to charter a bank. Such an opinion, I know, admits of no compromise, but certainly there is a great difference between the question that arises when it is proposed to establish a bank, and that which presents itself when it is proposed to pull down and destroy an established institution. The very repeal of a law admits its constitutional validity, for, if it is unconstitutional it is void of itself; and therefore a vote for a repeal can scarcely be regarded as the expression of an opinion that the law is unconstitutional. I lay no stress at this time upon the repeated recognitions, which must now be considered as having definitively settled the construction of the Constitution. Every one can give to this consideration its due weight. But, I would ask gentlemen to remember, that the charter of this bank received all the constitutional sanctions, was promulgated to the country and to foreigners as a constitutional law, and has now been two years in force. Great interests are connected with its existence; incalculable mischiefs, public and private, will follow its repeal, and among them, not the least considerable, will be the wound inflicted upon the character and credit of the nation. How shall we stand in the estimation

of foreigners? I am afraid to follow out the inquiry. Let every one reflect for himself, and as he values the national reputation, so let him decide. I cannot, however, at all understand the grounds upon which gentlemen who have constitutional objections, can vote for a *scire facias*. That proceeding distinctly admits the legal existence of the bank, and sends it to the judiciary to be tried for its life, to determine whether it has not forfeited its right to continue longer to exist; an admission wholly inconsistent with the opinion alluded to. But, of this, every member must judge for himself.

If Congress had a power to incorporate a bank, and have exercised that power according to the Constitution, no argument can be necessary to prove that we have no right to repeal the charter. This is a settled, established principle, founded in the nature of the power, and almost universally conceded. Chartered rights are sacred things; they are the rights of individuals guarantied to them by the public authority, and of which no lawful authority can deprive them, but that which the charter itself prescribes, or which is implied from its nature, to be exercised in the manner pointed out by the charter, and according to the law of the land: Any other mode of proceeding to deprive this legal being of existence would be an act of lawless, unjust violence, as much forbidden as to legislate away the life of a natural being. That we have a right to send this corporation to the judiciary, there to undergo its trial and receive its judgment, no one can deny, for so the charter has expressly provided. It is equally clear, I think, that here we are to exercise a sound discretion. If we are satisfied that the charter has been so violated as to work a forfeiture, still the question of expediency is open. We may deem it for the public interest to continue its existence, without alteration; to reorganize, if its organization has been impaired; to propose changes in its structure; or to let it go down, and, if needful, raise up a new institution. We are not

*bound*, even in that case, in the case of a clear unequivocal forfeiture, to send it to trial and condemnation. Is it not equally plain, that we ought not to send it to trial, if we are satisfied that there has been no forfeiture? Why expose ourselves to the certain consequence of a failure? It will assuredly not increase the public respect for our conduct. We may lose somewhat in the public estimation. Why subject the bank to the destructive effect of a protracted criminal proceeding, when no offence known to the law has been committed? A gentleman from Virginia, (Mr. Tyler,) calculating that such a proceeding would not be terminated in less than eighteen months, says it would give time to wind up the concerns of the corporation, which he thinks might now be done most advantageously for the stockholders. He takes it for granted, then, that the corporation would be condemned; that a *scire facias* and conviction are the same thing. But, the officers of the corporation will not so consider it; they are not at liberty so to consider it; they must go on and discharge their ordinary functions in the ordinary way, until its doom shall be finally pronounced, and then, and only then, would they be justified in commencing the arrangements that are to follow its dissolution. Till then, it is a subsisting corporation, entitled to enjoy all its rights, and bound to perform all its duties. But, let us suppose a more favourable issue. Let us suppose it to be acquitted. Will it pass through the trial unhurt? This artificial being, though it has not precisely the same sort of susceptibility as the natural being, is nevertheless exquisitely susceptible; it may be wounded, dangerously wounded, in *its credit*. This is its living principle, the source of all its healthy action, upon the preservation of which, the capacity to perform its functions mainly depends. There, it will be wounded by the mere institution of a criminal proceeding. It behooves us then carefully to examine the ground before we determine to proceed. What, I ask, then, is such a violation of the charter as will

work a forfeiture? The report admits that there is a distinction, in this respect, and that there may be violations or non-compliances which do not forfeit. It must be so. Every act that is forbidden by any law which it is bound to obey, every failure to do what any such law requires, no matter how minute, or to what cause owing, is a violation or non-compliance with the charter. It surely will not be pretended, that every such violation or non-compliance amounts to a forfeiture. It is no more true than that every such act or omission by an individual would merit the punishment of death. The act done may be void, because it is illegal; it may incur a particular penalty, because it is to a certain extent criminal, but it will not therefore amount to a forfeiture—the extreme punishment for extreme offence. What, then, I repeat, is such a violation? In the first place, it is obvious, from the charter itself, (Sect. 7. 23.) that it must be an offence of the *corporation*. The acts or defaults of officers, servants, or agents, do not necessarily work a forfeiture. Neither is it to be supposed that error, mistake, or even every species of misconduct, will cause a forfeiture. It can only be by such departure from, or neglect, or, if you please, violation of the fundamental and vital laws of its organization, as incapacitates the corporation to perform its duty, or does of itself determine its existence. These offences, if they are so to be termed, can be reached or redressed by no other means. If, for instance, an election had not been held at the time appointed by the eighth section, without the saving provision of that section, there could have been no election at all, and for want of an integral and vital part of its organization, the corporation would have ceased to exist. The charter itself has made the distinction. In the ninth article of the eleventh section, the corporation is expressly prohibited from dealing except in certain enumerated articles, and among them is public debt. In the tenth article, it is prohibited from making loans to the United States; or to particular states, beyond a

limited amount. It would violate the charter if it were to offend against either of these articles. What, then, is the charter forfeited? No: The twelfth and thirteenth sections establish the sanction for these prohibitions, by providing specific penalties, to be inflicted, not upon the corporation, but upon the individual transgressors. In the seventeenth section, also, the penalties are denounced for refusing to pay specie.

To sustain the contrary doctrine, the gentleman from Virginia has quoted and relied upon the famous proceeding, by quo warranto, against the city of London, in the time of Charles the 2d. It is a bad precedent from bad times. Sir, the administration of private justice in England between man and man, has for a long time flowed in a clear and steady current. You may generally appeal with safety to the precedents it affords. But when you come to examine the proceedings in crown causes, you will err most lamentably, unless you are aided by the light of cotemporary history. Is the gentleman from Virginia acquainted with the character of the precedent he has quoted for our imitation and adoption? I will take the liberty to refer him to the historian for an account of it. It occurred in the year 1683, at a time when the Royal prerogative, already most alarmingly extended, was abusing the power it had derived from the circumstances that attended and followed the restoration, to obtain an unlimited ascendancy. To break down and crush the spirit of the city of London was a favourite and important part of this system. The charges made against the city were two. The markets had been destroyed by the fire of 1666, and new ones rebuilt, with many conveniences. To defray the expense, a small tax had been assessed upon goods brought to market. This was the foundation of the first charge. The second, and the real ground, was, that the city of London, always on the side of the liberties of the people, and opposed to the arbitrary extension of the prerogative of the crown, had addressed

the King against the prorogation of Parliament. "The office of judge was at that time held during pleasure; and it was impossible that any cause, where the court bent its force, could ever be carried against it." If the gentleman wishes to know how the pleasure of the crown was *signified* in the instance referred to, he may find it in the book he has used, at page — to the following effect: "Memorandum. That when the demurrer in this case was joined, viz. Mic. Term. 34 Car. 2. Mr. Serjeant Pemberton was Chief Justice of the King's Bench. But, before Hilary Term, that it came to be argued, *he was removed*, and made Chief Justice of the Common Bench, and Sir Edward Saunders, *who had been counsel for the King in drawing and advising the pleadings*, was made Chief Justice of the King's Bench." The bloody Jefferies was the next Chief Justice. Does any gentleman still think this a precedent to be offered to our imitation? I will then beg leave to tell him further, that this decision took place in the very year whose annals are stained with the blood of Russell and of Sidney. It is one of the dark and atrocious offences, under the forms of justice, committed by a dependent and corrupted judiciary, at the instigation of the crown, which history has long since consigned to distinguished infamy. It is one of a series of arbitrary and oppressive acts, which, rousing the spirit of a brave and injured people, finally expelled the Stuarts from the throne of England, and caused the revolution of 1688. The corporation of London was of course condemned, and the King availed himself of the decision to grant a new charter, which he took care to adapt to his own views, of repressing the spirit of London, and curtailing its liberties. All the corporations of England—all, guilty or innocent, convinced that if the most powerful body of the kingdom had sunk under a contest with a corrupted judiciary, executing the arbitrary wishes of the crown, resistance on their part would be vain, came in, surrendered their charters, the security of their rights and

liberties, and accepted such new charters as the crown would condescend to give, paying for the privilege of being robbed of their rights such sums of money as the crown thought proper to exact. The revolution gave independence to the judges. One of the first acts of the government that succeeded was to declare this decision illegal and void. (2 W. & M. s. 1. c. 8.) By the judiciary it was never respected, but in all questions afterwards arising, the old charter was considered as having always continued in force. What is the language of modern and sound authority in England? "A judgment of ouster against mayor and aldermen does not dissolve a corporation." God forbid, says an English judge, that the rights of the innocent should be lost and destroyed by the offence of individuals. "When a corporation exists capable of discharging its functions, the crown cannot obtrude a new charter upon them." Thus repudiated and reprobated in England, thus condemned by its history, as well as by its association, are we to adopt this precedent? The violation of charters has ever been deemed an enormous grievance. It was one of our complaints against England, and thought worthy to be introduced into the Declaration of Independence, where it stands enumerated among the solemn causes that led to the separation.

I would beg leave to add further, before I examine the particular offences imputed, that, where a violation has taken place, I cannot conceive that it will work a forfeiture, if there be a specific remedy, redress, or penalty. A forfeiture in that case is unnecessary.

I shall touch very briefly upon the several imputed offences contained in the report, not only because I have already trespassed too long, but because the principles I have submitted go far to settle them, and also, because they have already been fully and satisfactorily answered by a member of the committee (Mr. Lowndes.)

The first of these charges relates to the two millions of



public debt purchased by the bank for the Commissioners of the Sinking Fund. I think it clear, that, in the question with the Treasury, the bank was in the right, and the obvious mode of correcting the error that has occurred, would be to pay to the bank the \$54,000 lost by passing the stock to the commissioners at par. But, no one, I think, after a moment's reflection, can hesitate to say, that there has been no violation of the charter, and every one will admit that if there had been, the government could not complain, having been a party, with full knowledge, to the transaction, and enjoyed all the benefit of it. The object of the charter was to prevent the bank from purchasing to keep, or to sell, that is to say, purchasing for its own use. It purchased in this instance for the Treasury: it passed the stock immediately to the commissioners, and all the peculiarity of the case consists in the simple circumstance, that it received from the government 54,000 dollars less than it paid. It is needless to spend time on this item, for if there had been a violation, there is a remedy for it by the charter, to be enforced under the charter, and not by destroying the charter.

The second imputed violation is what relates to the non-payment of the coin part of the second instalment. There is some apparent confusion upon this subject in the report, and there is one plain mistake. It will be necessary to ascertain the facts accurately, before we attempt to reason upon them. In page 7 of the report it is stated, "that the amount of specie in the bank in February, 1817, was \$1,724,109; \$324,000 more than the coin part of the first instalment, and which may fairly be presumed to have been received for the second instalment." The inference is, that only \$324,000 in coin had been received for the second instalment. This seems to be contradicted by the statement in page 6. The committee there say, "the loans were to be confined to aid the payment of the coin part of the second instalment, on the shares which had been subscribed at the

that dividends to the amount of \$ 1460, were paid to four stockholders, who had been in default when the dividends were declared. There is an unintentional ambiguity in the mode of stating the charge, in the report, which might induce a belief that the instalment had not been paid at the time of paying the dividend. From the documents it will be seen, that the instalment was paid, and that interest was charged upon it from the time when it became payable. The utmost loss that could have been incurred, would have been the difference between four per cent. and three per cent. for six months; equal to three hundred and sixty-five dollars. It was not, perhaps, so much; for the interest was probably charged up to the time of paying the dividend, which was more than six months. Whether these payments were made by mistake, or whether there were any peculiar circumstances to justify them, does not seem to have been inquired into, and cannot be ascertained. But every one must be satisfied, that, whether the payment was intentional, or whether it was by mistake—whether it was right, or whether it was wrong—the consequences cannot extend beyond those who were concerned in it. The money might perhaps be recovered back, or the officer be charged with it as a wrongful payment. It can never forfeit the charter.

The only remaining article is that which regards the elections—particularly the first. This charge is, in substance, neither more nor less than that votes were received which the committee believe to have been illegal, and that the judges of the election, the directors and officers of the bank, “perfectly well knew the facts,” which, in the opinion of the committee, made them illegal. As there were no directors till after the first election, I do not see how they can be implicated in the charge, so far, at least, as relates to that election. But waiving that, and waiving, too, the inquiry whether the judges had any right to refuse the votes, (a very doubtful matter, to say the least of it) let us examine the complaint a little more closely, with a view, not to its foundation in fact, but to its legal results. I have

never understood, nor do I believe, that any number of illegal votes will make an election void. There are circumstances that will undoubtedly avoid an election. If an armed force, of soldiers, or others, were to surround the polls, and by violence, or the menace of violence, prevent the electors from voting, or otherwise interfere with the free exercise of their franchise, the election ought to be held void. But the mere circumstance of illegal votes being received, is of no importance, unless the election is contested. And what is then the rule? The chairman of the committee of elections will answer that question. Where the election is by ballot, the illegal votes are all deducted from the majority. Suppose there is still a majority, is the election void? No: The highest on the return is the person elected. Suppose there was no opposing candidate, is the election questionable? I believe we have never heard of such a thing. Again, sir—Suppose the election not to be contested: the returned member takes his seat, and holds it till his term of service has expired. Is his right afterwards questionable, or the validity of the acts he has done? I have never so understood it. These are the ordinary rules applicable to such cases. How do they apply here? Illegal votes, it is said, were received. Was there any opposition, or were all the votes, legal and illegal, given for the same ticket? Was the election contested? Has not the time for contesting it gone by? Supposing it still open to contest, can any one inform us how many legal and how many illegal votes were given; or what would be the state of the poll if the illegal votes were deducted from the majority? These are matters necessary to be ascertained in the first instance, and until they are ascertained, at all events the election is good, and the acts done under it valid. Even where an election is contested, the returned candidate takes his seat, and holds it, with all its rights, voting and acting, with others, until the contest is decided. But, again—Was it ever heard that the mere fact of receiving illegal votes at the election of corporation officers, was a forfeiture of the charter? Every cor-

poration in the United States might tremble if that were the law. No; you may invalidate the election before the proper tribunal—you may set it aside. The judiciary may inquire into it—may expel those who have been introduced by illegal means—may introduce those who have been by illegal means kept out. These are the appropriate and all-sufficient remedies, which we have frequently seen employed, and employed with effect. They apply directly to the evil where it is found; correct that evil, but leave the innocent corporation, and the innocent corporators, in the enjoyment of their rights, which these remedies are intended to preserve, and not to destroy.

I had intended to have noticed the propositions brought forward by the chairman of the committee. It would be unpardonable to consume more of the time of the house. A single remark upon them, and I have done. Among those propositions there are several that would be highly advantageous to the bank. If they were offered to its free acceptance, perhaps they would be accepted. But, under the threat of a *scire facias*, they ought not to receive a moment's consideration.

( A. )

*Statement of Public Deposites, from January, 1817, to December, 1818.*

PUBLIC DEPOSITES.

31st January 1817,	-	-	-	\$ 1,147,772 97
March “	-	-	-	11,615,017 62
30th April “	-	-	-	11,345,796 78
29th July “	-	-	-	24,746,641 86
31st October “	-	-	-	7,743,899 74
9th July 1818,	-	-	-	7,967,775 14
1st Dec'r “	-	-	-	6,069,975 15

PUBLIC DEBT REDEEMED.

31st July 1817,	-	-	-	\$ 13,398,438 08
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*A Statement of the annual gain or loss, by Exchange, in relation to the payment of the Dutch Loans.*

Years.	GAIN ON REMITTANCES.			Loss on Exchange.	REMARKS.
	From the Treasury.	To the Treasury.	From Amsterdam to Antwerp.		
1791	\$ 4,912 29		\$ 1,188 92		It will be perceived, by comparing this statement with the statement of the operations of the Commissioners of the Sinking Fund, that there is a variation in the amounts as annually stated. To account for this, it may be observed, that the statement of the operations of the Commissioners of the Sinking Fund is made upon bills actually received, and the statement in relation to the payment of the Dutch loan, upon bills actually received. Treasury Department. Register's Office, Jan. 26, 1819. JOSEPH NOURSE.
1792		\$ 42,717 79			
1793	10,956 78			\$ 13,494 10	
1794		156 80		13,139 62	
1795			311 40		
1796	581 53				
1797	31,048 80				
1798	74,061 42		583 11		
1799	37,224 17				
1800				11,963 75	
1801	5,628 50		763 63	54,096 97	Total gain \$ 409,197 20 Do. loss 103,377 06 Nett gain \$ 305,820 14
1802	10,151 39				
1803	128,814 94				
1804	48,897 71				
1805	10,691 85				
1806	1,853 01			10,662 70	
1807					
1808					
1809	\$ 364,822 39	\$ 42,874 59	\$ 1,500 32		
	42,874 59				
	1,500 32				
	\$ 409,197 20				

*A Statement of the annual gain or loss, by Exchange, under the operations of the Commissioners of the Sinking Fund.*

Years.	Gain on Exchange.	Loss on Exchange.	REMARKS.
1802	\$ 11,200 00		See Report Commissioners Sinking Fund, 3d February, 1804
1803			Do.
1804	45,049 25		Do. 4th " 1805 Statement D.
1805	117,137 53		Do. " " 1806 " " D.
1806	35,637 77		Do. " " 1807 " " D.
1807	9,437 58		Do. " " 1808 " " D.
1808			Do. 3d " 1809 " " "
1809			Do. 2d " 1810 " " "
1810			Do. 1st " 1811 " " "
1811	56,736 14		Do. 5th " 1813 " " "
1812	91,532 88		Do. 4th " 1814 " " "
1813	92,249 86		Do. 6th " 1815 " " "
1814	19,827 61		Do. " " 1816 " " "
1815		\$ 54,193 72	Do. " " 1817 " " DD.
1816		75,446 94	Do. " " 1817 " " D.
1817	3,512 59		Do. " " 1818 " " "
	\$ 482,361 20	\$ 129,640 66	
	129,640 66		
	\$ 352,720 54		

Treasury Department,  
Register's Office, January 26, 1819. JOSEPH NOURSSE.

## **SPEECH,**

**ON THE MISSOURI QUESTION, DELIVERED IN THE HOUSE  
OF REPRESENTATIVES OF THE UNITED STATES, ON THE  
8TH AND 9TH OF FEBRUARY, 1820.**

This speech was delivered while the House of Representatives was in committee of the whole, on the bill for the admission of Missouri into the union. The debate in committee commenced on the 26th January, 1820, on the following amendment, proposed by Mr. Taylor of New York, to the bill: "And shall ordain and establish that there shall be neither slavery nor involuntary servitude in the said state, otherwise than in the punishment of crimes whereof the party shall have been duly convicted. Provided always, that any person escaping into the same, from whom labour or service is lawfully claimed in any other state, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labour or service as aforesaid. And provided also, that the said provision shall not be construed to alter the condition or civil rights of any person now held to service or labour in the said territory."

**MR. CHAIRMAN,**

THE important question now before the committee, has already engaged the best talents, and commanded the deepest attention of the nation. What the people strongly feel, it is natural that they should freely express; and whether this is done by pamphlets and essays, by the resolutions of meetings of citizens, or by the votes of state legislatures, it is equally legitimate, and entitled to respect, as the voice of the public, upon a great and interesting public measure. The free expression of opinion, is one of the rights guaranteed by the constitution, and in a government like ours, it is an invaluable right. It has not, therefore, been without some surprize and concern, that I have heard it complained of, and even censured in this debate.

One member suggests to us, that in the excitement which prevails, he discerns the efforts of what he has termed an "expiring party," aiming to re-establish itself in the possession of power, and has spoken of a "juggler behind the scene." He surely has not reflected upon the magnitude of the principle contended for, or he would have perceived at once the utter insignificance of all objects of factious and party contest, when compared with the mighty interests it involves. It concerns ages to come, and millions to be born. We, who are here, our dissensions and conflicts, are nothing, absolutely nothing, in the comparison: and I cannot well conceive, that any man who is capable of raising his view to the elevation of this great question, could suddenly bring it down to the low and paltry consideration of party interests and party motives.

Another member, (Mr. McLane) taking indeed a more liberal ground, has warned us against ambitious and designing men, who, he thinks, will always be ready to avail themselves of occasions of popular excitement, to mount into power upon the ruin of our government, and the destruction of our liberties. Sir, I am not afraid of what is called popular excitement—all history teaches us, that revolutions are not the work of men, but of time and circumstances, and a long train of preparation. Men do not produce them: they are brought on by corruption—they are generated in the quiet and stillness of apathy, and to my mind, nothing could present a more frightful indication, than public indifference to such a question as this. It is not by vigorously maintaining great moral and political principles, in their purity, that we incur the danger. If gentlemen are sincerely desirous to perpetuate the blessings of that free constitution under which we live, I would advise them to apply their exertions to the preservation of public and private virtue, upon which its existence, I had almost said, entirely depends. As long as this is preserved, we have nothing to fear. When this shall be lost, when



luxury and vice and corruption, shall have usurped its place, then, indeed, a government resting upon the people for its support, must totter and decay, or yield to the designs of ambitious and aspiring men.

Another member, the gentleman to whom the committee lately listened with so much attention, (Mr. Clay,) after depicting forcibly and eloquently, what he deemed the probable consequences of the proposed amendment, appealed emphatically to Pennsylvania; "the unambitious Pennsylvania, the keystone of the federal arch," whether *she* would concur in a measure calculated to disturb the peace of the union. Sir, this was a single arch; it is rapidly becoming a combination of arches, and where the centre now is, whether in Kentucky or Pennsylvania, or where at any given time it will be, might be very difficult to tell. Pennsylvania may indeed be styled "unambitious," for she has not been anxious for what are commonly deemed honours and distinctions, nor eager to display her weight and importance in the affairs of the nation. She has, nevertheless, felt, and still does feel, her responsibility to the union, and under a just sense of her duty, has always been faithful to its interests,—under every vicissitude, and in every exigency. But Pennsylvania feels also a high responsibility to a great moral principle, which she has long ago adopted with the most impressive solemnity, for the rule of her own conduct, and which she stands bound to assert and maintain, wherever her influence and power can be applied, without injury to the just rights of her sister states.—It is this principle, and this alone, that now governs her conduct. She holds it too sacred to suffer it to be debased by association with any party or factious views, and she will pursue it with the singleness of heart, and with the firm but unoffending temper which belong to a conscientious discharge of duty, and which, I hope I may say, have characterized her conduct in all her relations. If any one desire to know what this principle is, he shall hear it in

the language of Pennsylvania herself, as contained in the preamble to her act of abolition, passed in the year 1780. I read it not without feelings of sincere satisfaction, as abridged by a foreign writer, with his introductory remark. (2 Belsham, 23, Memoirs of Geo. 3.)

"It affords a grateful relief from the sensations which oppress the mind in listening to the tale of human folly and wretchedness, to revert to an act of the most exalted philanthropy passed about this period by the legislature of Pennsylvania, to the following purport:" "When we contemplate our abhorrence of that condition, to which the arms and tyranny of Great Britain were exerted to reduce us, when we look back on the variety of dangers to which we have been exposed, and deliverances wrought, when even hope and fortitude have become unequal to the conflict, we conceive it to be our duty, and rejoice that it is in our power, to extend a portion of that freedom to others which hath been extended to us, to add one more step to universal civilization, by removing, as much as possible, the sorrows of those who have lived in undeserved bondage. Weaned by a long course of experience from those narrow prejudices and partialities we had imbibed, we conceive ourselves at this particular period, called upon, by the blessings we have received, to manifest the sincerity of our profession. In justice, therefore, to persons who having no prospect before them, whereon they may rest their sorrows and their hopes, have no reasonable inducement to render that service to society which otherwise they might; and also in grateful commemoration of our own happy deliverance from that state of UNCONDITIONAL SUBMISSION to which we were doomed by the tyranny of Britain. *Be it enacted*, that no child born hereafter shall be a slave, &c." In this manner did Pennsylvania express her thankfulness for the deliverance that had been wrought for her, and I am confident she will never incur the sin and the danger of ingratitude.

Stedfastly as Pennsylvania holds the position here taken, she will not officiously obtrude her opinions upon her sister states. One of the grounds of her rejoicing, and one of the causes of her gratitude, was, that "she had it in her power to abolish slavery." She will not in this respect presume to judge for others, though she will rejoice if they too should have the power and feel the inclination. But, whenever the question presents itself, in a case where she has a right to judge, I trust she will be true to her own principles, and do her duty. Such I take to be the case now before the committee.

The proposed amendment presents for consideration three questions: that of the constitutional power of congress, that which arises out of the treaty of cession, and, finally, that which is termed the question of expediency. I beg the indulgence of the committee while I endeavour to examine them in the order stated.

1. We are about to lay the foundation of a new state, beyond the Mississippi, and to admit that state into the Union. The proposition contained in the amendment is in substance to enter into a compact with the new state, at her formation, which shall establish a fundamental principle of her government, not to be changed without the consent of both parties; and this principle is, *that every human being born or hereafter brought within the State, shall be free.*

The only questions under the constitution, seem to me to be, whether the parties are competent to make a compact, and whether they can make such a compact? If they cannot, it must be either, for want of power in the parties to contract, or from the nature of the subject.

It cannot, at this time of day, be denied, that the United States have power to contract with a state, nor that a state has power to contract with the United States. It has been the uniform and undisputed practice, both before and since the adoption of the constitution. There are numer-

ous instances of cessions of territory, or claims to territory, by states, to the Union. By New York in 1781; by Virginia in 1784 and in 1788; by Massachusetts in 1785; by Connecticut in 1786; by South Carolina in 1787; by North Carolina in 1790; and by Georgia in 1802. The last mentioned cession is the more remarkable, because it was made by a formal argeement between the United States and Georgia, in which the stipulations on each side are stated in the same manner and with the like solemnity, as in contracts with individuals. No doubt they were considered to be, and really are, of equal efficacy.

There is one instance, of a cession of territory by the United States to a state, that to Pennsylvania, in September 1788, in which also there are mutual stipulations.

Each of these instances, is a case of mutual compact, by which there was a surrender of a portion of power and sovereignty, on the part of the respective states; by which, too, there were terms mutually agreed upon. The most striking is that from Virginia, which I shall have occasion to refer hereafter, and that from Georgia, because they both contain conditions operating as a restraint upon the legislative authority of the United States, binding and adhering to the ceded territory, and fixing the terms and conditions of its future government. So, when the United States, soon after the state of Louisiana was admitted into the Union, enlarged the territory of the state by a cession, it was done upon conditions, which thenceforth became obligatory upon the state.

These instances are sufficient to show that the United States, and a state, are competent to make a binding compact. Indeed it is impossible that any man should doubt it. The states have capacity to contract with each other, so far as they are not restrained by the constitution. In 1785 a compact was made between Pennsylvania and Virginia. There was a compact between Pennsylvania and New-Jersey, and between South Carolina and Georgia.

The only restraint in the constitution (art. 1. sec. 10. clause 2.) is that which prohibits states from entering into any agreement or compact with each other, or with a foreign power, without the consent of congress; and this prohibition, from its very nature admits, that they may enter into such compacts or agreements with the United States.

The states have a capacity to contract even with individuals, and in so doing to part with a portion of their legislative power. This is the case wherever a charter of incorporation is granted, by which rights of property become vested. During the period of the charter, the subject is beyond the control of the legislative authority, which is so far suspended or extinguished by the grant. The United States have done the same thing, and with the like effect.

If it be competent to the United States to contract with an old State, it seems to follow of course, that it has a competency to contract with a new one. The admission of the state is itself a *compact*, as the constitution of the United States was a compact between the existing states, and it would be difficult to assign any good reason, why upon the admission of a new state to a participation in the privileges and benefits of the Union, such terms might not be proposed and insisted upon as the general welfare should seem to require. As the stipulation, whatever it may be, derives its binding efficacy from the assent of the state, which its sovereignty, or qualified sovereignty, enables it to give, a new state is as competent as an old one. Indeed, the possession and the exercise of this power are necessary to enable the United States to execute the contracts they may enter into, with any state of the Union, upon receiving from it a cession of territory, wherever such cession is accompanied, as it usually has been, with terms upon the part of the ceding state, applying to and intended to bind the territory deded.

Accordingly, no new state (unless formed out of an old one) has ever been admitted into the Union, but upon terms agreed upon by compact, and irrevocable without the consent of all the parties. The states formed out of the North-West Territory, (Ohio, Indiana, and Illinois,) have been made subject, as a fundamental law of their government, to the terms of the ordinance of 1787, including the very condition now proposed for Missouri. The states of Mississippi and Alabama, formed out of the territory ceded by Georgia, have been subjected to all the provisions of the ordinance, except the one which regards slavery, and that was expressly excluded by the terms of the cession. The state of Louisiana, the only one yet formed out of the territory acquired from France, has been in like manner admitted upon terms; different it is true, from those which have been required from the other states, but still such terms as congress thought applicable to her situation, and such as are sufficient to demonstrate the extent of the authority possessed by the United States. Even in the bill now under consideration, certain propositions, as they are styled, are offered to the free acceptance of Missouri, but if accepted, they are to be forever binding upon her.

Thus, it appears, that a new state may contract; and it is essential that it should be so, for her own sake as well as for the sake of the union. It remains, then, to inquire, whether the stipulation proposed in the amendment, is, on account of the nature of the subject, such an one as it is beyond the power of a state to enter into? It has already been remarked, that a state, at the moment of its formation, is as entirely sovereign, and as capable of making a binding contract, as at any future period. The real question, therefore, is, whether it is beyond the power of any state in this union, for any consideration whatever, to bind itself by a compact with a state, or with the United States, to prohibit slavery within its borders? To suppose so, seems to impute a want of sovereign power, which could

only arise from its being parted with by the constitution, and this I think can scarcely be affirmed. But I do not mean to anticipate, as my object at present is to follow the practice of the government.

In this view, the ordinance of 1787, respecting the North-West Territory, and the history of the states formed under it, are eminently deserving of consideration and respect. This ordinance was framed upon great deliberation. It was intended to regulate the government of the territory; to provide for its division into states, and for their admission into the union; and to establish certain great principles, which should become the fundamental law of the states to be formed. In its territorial condition, it was subject to the exclusive jurisdiction of congress, to be exercised by the ordinary process of legislation. But it was one of the terms of the cession by Virginia to the United States, that this territory, as it became peopled, should be divided into states, and that these states should be admitted into the union, "upon an equal footing, in all respects, with the original states." We shall now see how the fulfilment of this engagement was effected. After providing for the territorial government, the ordinance proceeds as follows: "And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of states, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original states, at as early periods as may be consistent with the general interest. It is hereby ordained and declared, that the following articles shall be considered as *articles of compact*, between the original states and the people and States in the said territory, and *forever remain unalterable unless by common*

*consent.*" Then follow the several articles, of which the sixth declares, "that there shall be neither slavery nor involuntary servitude, &c." The fifth article provides expressly, that "the constitution and government (of the states) so to be formed, should be republican, and in conformity to the principles contained in these articles." When the states of Ohio, Indiana, and Illinois, respectively, applied for admission, they were admitted upon the express condition that their constitutions should be republican, and in conformity to the ordinance of 1787. They assented to the condition, and were admitted "upon an equal footing with the original states."

I am aware that all this has been pronounced, rashly I think, to be an usurpation. The term does not well apply, at this time of day, after the repeated sanction of every kind which the ordinance has received. In truth, if there be any thing in our legislative history, which is entitled to our affection for the motives in which it originated; to our veneration for the authority by which it is supported; to our respect for the principles embodied in it, it is the ordinance of 1787. But the charge of *usurpation* is in every sense inapplicable, for the efficacy of the contract arises from the assent of the state to the conditions proposed as the terms of her admission.

But this ordinance is entitled to still higher consideration. It was a solemn compact between the existing states, and it cannot be doubted, that its adoption had a great influence in bringing about the good understanding that finally prevailed in the convention, upon several points which had been attended with the greatest difficulty. It passed on the 13th July, 1787, while the convention that framed the constitution was in session. From the minutes of that body, lately published, it will be seen, that the two most important and difficult points to adjust, were those of the admission of states, and the slave representation. This ordinance finally adjusted both these matters, as far as con



cerned *all* the territories *then belonging to the United States*, and was therefore eminently calculated to quiet the minds of the advocates of freedom; to remove their objections to the principle of slave representation, and to secure their assent to the instrument which contained that principle, by limiting its operation to the existing states. It is not to be questioned, that this ordinance, unanimously adopted, and, as it were, fixing an unchangeable basis by common consent, had a most powerful influence in bringing about the adoption of the constitution. It is a part of the groundwork of the constitution itself; one of the preliminary measures upon which it was founded. Hence the unusual solemnity of the terms in which it is conceived, so different from the ordinary forms of legislation, and which give to it the character of a binding and irrevocable covenant.

Such, then, is the power that has *always* been exercised by congress, upon the admission of new states into the union, and exercised without dispute. Whence was it derived? It was exercised, as we have seen, immediately before the adoption of the constitution, while that instrument was under consideration, and recognized immediately after, by the act of the first congress, supplementary to the ordinance. Nothing can be more clear, than that if the ordinance of 1787 was inconsistent with the constitution, it was repealed by that instrument. If the convention had meant to repeal it, they would have done so. It was directly in their view, and embraced a subject which was earnestly and carefully treated by that body. And yet, immediately after, when the same men who had framed the constitution, and knew its intention, were many of them members of congress, the supplement to the ordinance was adopted. That was not a time, you may be assured, for stretching the federal power. The greatest jealousy prevailed, and the friends of the constitution were obliged to observe the utmost caution, while it was slowly winning its

way to the public favour, refuting the suggestions of its enemies, and settling down, gradually but firmly, upon the solid foundation of ascertained public benefit.

In what part of the constitution is this power conferred? It is conferred by that provision which authorizes congress to admit new states into the union; and to me it seems perfectly plain, that we need look no further for it. There are other parts of the constitution which have a bearing upon the question, because they apply to the subject upon which it is proposed to exercise the power, and may very well be used for the purpose of illustration or of argument. This use of them affords no just occasion for the remark, which has been so triumphantly made, that the friends of the restriction differ among themselves, as to the part of the constitution from which the power to impose it is derived. They do not differ. But, as upon every other question of constitutional power, they naturally resort for information to all the provisions of the constitution, which have relation to the matter in discussion.

The power to *admit new states* is given to congress in general terms, without restriction or qualification, and upon every just principle of construction, must be understood to confer whatever authority is necessary for carrying the power into effect, and every authority which in practice had become incident to the principal power, or was deemed to make a part of it.

Of late it has been the fashion to insist upon a liberal construction of the constitution, and its most extensive efficacy has been found in the implied powers it is supposed to confer. All powers are implied that are necessary for the execution of the enumerated powers, and the necessity need not be absolute; a modified necessity or high degree of expediency is sufficient. Whence the authority to incorporate a bank? Whence the authority to apply the public treasure to the improvement of the country by roads and canals? Whence the authority to encourage domestic

industry by bounties and prohibitions? Whence the authority to purchase and to govern the territory now in question? Is it to be found in the letter of the constitution? They all rest upon this single position, that an original power having been granted, every other power is implied which is necessary or useful for carrying that power into execution—and this is an inherent essential principle of the constitution, altogether independent of its express words.

But the power in question rests upon stronger ground than this. The constitution of the United States, though in form the work of the people (who made it their own by adoption) was a compact between states. It was made by delegates chosen by the states. The votes in the convention were given by states. It was submitted to the states for their ratification: and, its existence depended upon the sanction of a certain number of the states. These states were sovereign, but confederated by a slight and insufficient union, incapable from its weakness of providing for the common welfare. Their sovereignty extended to every thing within their limits, and to every thing else, but the few powers (if they deserve to be so denominated) which were conceded to the congress of the union. Nevertheless it was a *confederation*, which comprehended all who were parties to it, and excluded all others. Was there a power in this confederacy to admit new members? It cannot be doubted. To whom was that power confided. The express provision in the articles of confederation, which has been quoted and relied upon in opposition to the power contended for, has no relation to the subject of new states, to be formed and admitted from the territory of the United States. It was an invitation to Canada and the other British *colonies* in America to join us in resistance to the common enemy, and if they had accepted the invitation, they would have come into the confederation upon the terms only of making common cause with us. But there

was a power, independently of this provision, to admit new members. That is clear from its exercise—and *that power* was exercised by the states in congress. When Virginia, in 1786, ceded to the United States her claim to the North West Territory, it was upon condition that the territory should be formed into states, and that these states should be admitted upon an equal footing with the original states. Congress accepted the cession upon that condition, and proceeded to fulfil it by the ordinance of 1787.

The *extent* of the power, the *mode* of its exercise, and the *incidents* belonging to it, were also determined by the practice of our Government. Among these incidents was that of making *terms, conditions* or *compacts*, with the states admitted: and so inseparably incident was this deemed to be, that when Virginia stipulated for the admission of the states upon an equal footing with the original states, that stipulation was understood to be fully complied with, by admitting them upon terms. It is not at all material to the present purpose, to inquire, whether the ordinance of 1787 was or was not an usurpation. If there was any authority usurped, it was that of admitting the states, the principal power itself, not the incidents. It is sufficient that in point of fact, the power of admitting new states was exercised, and was understood from its exercise to include in it the power of proposing terms, conditions or stipulations, and, among them the very condition now in question.

When the power of admitting new states into the union, was vested by the constitution, without limitation, in the congress of the United States, was it not intended to carry with it whatever in practice had been established to be an incident of the power, or a part of the power? Where was the residue lodged? Not with the states; for the states as such, have no longer a voice in the union, except for the purpose of amending the constitution. Not with the people; for the people have no voice, but through their

representatives in congress. The matter resolves itself at last into this single question : Did the people of the United States, when they framed their constitution, mean to give up and forever relinquish the power of proposing terms, or did they deposit it with their own immediate agents, chosen by themselves? They had always found terms of some sort beneficial and necessary, and they have been necessary and expedient in every instance since the constitution was formed, so that, with the exception of Vermont, not a single state has ever been admitted into the union but upon conditions agreed to by compact. Who are the congress of the United States; by whom are they chosen; who do they represent? The people of the existing states. Who is it claims to be admitted into the confederacy, and to participate in the benefits of the union? An alien, as yet, one who has no *right* of admission, whom the people of these United States, as a political association, may at their pleasure reject. Can it be supposed, that by framing a constitution of government for themselves, the people of the United States meant to destroy forever their own inherent right of prescribing terms and conditions of admission? And yet this is the obvious result of the argument, for as it denies the power to congress, and it cannot be exercised by the states or the people, it is forever gone. In what part of the constitution do you find any countenance for such a conclusion? There are limits, it is true, to the powers of congress, but those limits are the boundaries which separate the rights of the union from those of the states and the people. Is there any power denied to congress which is not reserved to the states or the people? Was any power intended to be denied to them, in its nature fit and proper to be exercised, but which could not be exercised by the states or the people?

Besides, if this power was, in its exercise, to be merely ministerial, why was it confided to congress, the highest legislative authority of the nation, entrusted with the care

of all its most important concerns? It is derogatory to the character of congress, and altogether inconsistent with the general tenor of its high duties, to suppose, that it shall be required to perform an office so humiliating. One gentleman tells us, that Missouri has a right to be admitted, and will assert her right. What is this but to say, she will knock at the door, because it is civil to do so, but if it be not immediately opened, she will break it down and come in by force. Another gentleman has told us of a citizen of Missouri, who said, that rather than submit to the restriction, he would shoulder his musket against the United States. Such intimations have no other effect than to create a very reasonable doubt whether Missouri is yet fit to be admitted. Admission presupposes the existence in the new territory of principles and feelings somewhat like those which govern other parts of this union, and those are feelings of submission and respect for the constitution and laws, and the authority exercised under them. If we have no right to impose the condition, there is an end of the question: but if we have a right, and it is deemed expedient to exercise it, I trust the congress of the United States are not to be frightened from their purpose by threats like these. What becomes of the union, which gentlemen express so much anxiety to preserve, if it cannot assert and maintain its rightful authority, even against a territory, without the original limits of the United States, only very lately acquired, and with a population who have scarcely had time to become acquainted with each other? Such an union could hardly be worth preserving. Why, sir, when Virginia brought her eldest daughter Kentucky, trained up in the habits and affections of her parent to an age when she was fit to be introduced into the society of the union, and offered her as an associate fit to be received, congress, it is admitted, had a right to receive or to reject her. But when a state, formed out of an alien territory, and having had no paternity but that of congress, offers herself

for admission, she may demand and insist upon being received. And does Missouri deem so lightly of the privilege of belonging to this union, that she would rather forego it than make a slight sacrifice of a seeming advantage, or that she would hazard it for the sake of asserting her own opinion in opposition to that of congress? I cannot believe, that upon reflection she will adopt any such course. If she should, it will be time enough then to consider how the authority of the union is to be maintained.

I have said that it is derogatory to the authority of congress, and wholly inconsistent with the tenor of its high duties and capacities, to suppose that it is merely to perform the humble ministerial office of opening the door, upon demand, for the admission of a state, without any discretion whatever. No instance can be found, where the constitution has assigned to the legislative power the performance of such a duty. Thus construed, it is not a power at all. The cases that have been put are in no respect analogous. The power of congress, upon the death of the President and Vice President, to declare what officer shall act as President of the United States, is a very high power, involving in its exercise much discretion, a discretion commensurate with the various and important trusts confided to the chief magistrate. It can with no propriety be said to be ministerial, and its being deposited with congress, is the strongest proof of the confidence reposed in that body. The office of counting the ballots, upon the election of president and vice president, simple as it may seem, and easy as in ordinary cases it is, is nevertheless an office of important trust, and including some judicial discretion, as well as a most serious responsibility. It is a fit office to be executed by the highest body in the nation. The power of impeachment is not a ministerial, but a judicial power, and it belongs not to congress, but to a single branch. The same remark applies, with equal force, to the right which each branch possesses of judging of the elections and re-

turns of its members, a judicial power, incident to every body composed of elected delegates, and one of its inherent privileges. In all these cases, however, it may not be amiss to observe, that the constitution gives only the principal power. The incidental powers, such as sending for persons and papers, enforcing the attendance of witnesses, and the like, are implied from the principal grant.

That construction which supposes that congress have a power indeed to admit or to reject, but simply to admit or to reject, seems to me (though it might be sufficient for the present case) to reflect upon the wisdom of the framers of the constitution. The objection to the admission of a state may arise from something not in its nature insuperable, but which might be removed by compact or by accepting a condition. Would it not be worse than idle to say, that in such a case, the state must be rejected, for want of a power on the one side to propose, and on the other to agree to certain terms of compact? In truth, as will be shown more fully hereafter, such a discretion in congress is essentially necessary to the just exercise of the power of admission, not only on account of the union, but also of the states to be admitted.

The gentleman from Delaware has indeed argued, that the power given is to "admit" not to "form or create" a state, and therefore congress have no power to interfere in the formation. This only brings us back to the inquiry, what is meant by the word "admit?" It has always been understood that congress have a right, and are in duty bound, to superintend the formation of a state, and to see that it is properly formed. The terms of the very bill now on your table (following the usual phraseology) "*authorize*" the people of Missouri to form a constitution of state government preparatory to their admission.

But, antecedently to the constitution itself, the states then existing had prescribed certain terms or conditions to the states to be formed out of the N. W. Territory. If con-



gress have no power but to admit or to reject, the territory was by the constitution liberated from those conditions, for want of authority to impose them. There might be a question indeed, whether the territory has not reverted to the states which ceded it, in consequence of the incapacity of congress to fulfil the stipulations.

I beg leave then to return to the question—the incidents to this power being quite as important as the power itself, the power being worse than worthless without them, did the people of the United States, in framing a constitution of government for themselves, intend to destroy the power, by stripping it of the incidents that gave it all its value? Did they mean to prevent its application to the cases to which they had themselves applied it? And for what purpose? Better, far better would it have been, that no power at all should have been given to congress, than that they should thus be required, either blindly to admit, or sullenly to reject. The design of the constitution was not to abridge, but to enlarge and strengthen the powers of the federal government, and it would be strangely inconsistent with the general plan, to suppose, that in a matter which is properly of national concern, it had denied to congress a portion of power which had been actually and beneficially exercised under the confederation. We should naturally expect to find it where it was deposited before. I think it is accordingly there deposited, with all its established incidents, among which is that now in question.

This power is not now asserted for the first time under the constitution. It has always been exercised by congress. There never has been a state admitted, except Vermont, without conditions which surrendered a portion of legislative authority more or less extensive. Kentucky entered into stipulations with Virginia, and among them was one by which she bound herself for five years, not to tax the lands of non-residents higher than those of residents, and never to tax the lands of non-residents who should reside in Vir-

ginia, higher than those of residents. This is a perpetual restraint upon her power of legislation, but it is no diminution of her sovereignty. The states of Ohio, Indiana, and Illinois, by compact with the United States, are under a perpetual incapacity to permit slavery within their limits. This is no derogation from their just sovereignty, nor does any man imagine that it impairs their character or lessens their weight in the union. Alabama, Mississippi, and Louisiana, too, have come in upon conditions imposed by congress at the time of their admission. In every such instance, the states have been deemed to be, and have in fact been, admitted upon an equal footing with the original states. The uniform exertion of this authority for such a length of time, is not to be regarded merely as furnishing us with so many precedents, entitled to more or less consideration according to circumstances. There must be a time after which the practical construction of the constitution, universally understood, and adopted and acquiesced in by the people, especially in matters of great public concern, is to be deemed the true construction, and placed beyond the reach of dispute or controversy. Shall we now undo all that has been done for above thirty years, and done with the common consent? Shall we reject as erroneous the interpretation that has been without exception put upon the constitution from the time of its adoption? It is due to the constitution itself, that it should not be exposed to treatment which must weaken its claim to the public confidence and respect. It is due to the people, whose constitution it is, that what it has always been understood in practice to be, it shall continue to be, until they may think proper to change its provisions.

But here we are met by an objection, which seems to be considered by those who present it as of great force. If one condition may be proposed, why not another, and another, without limit, to the entire annihilation of all the rights of the state? This argument, though pressed with

a sort of triumph, as if it were completely unanswerable, can scarcely be said to be even plausible. The possible abuse of power can never be urged to show that a power does not exist, or that it is not upon the whole salutary and proper ; for if admitted at all, it proves by far too much, as it is equally available against every grant of power. In the formation of government, the first inquiry must be, what authority is fit and necessary to be delegated, and then we are to inquire to whom it shall be confided, and what security can be provided against its faithless exercise ? All authority is exposed to the danger of abuse, for it is administered by men. Government has been said, by a once celebrated popular writer, to be itself an evil, inasmuch as its necessity arises from the vices and weakness of our nature. But the constitution has provided with the greatest care against the abuse of power, by making every public agent in some way accountable for his conduct, and by conferring the highest powers upon those who are immediately responsible to the people ; and as long as the people shall continue to be faithful to themselves, so long the check will continue to be effectual. This is the great security, and it depends upon the virtue and intelligence of the people. No government ever afforded the same degree of protection, with so little burthen, and if we had not been most vehemently censured abroad for speaking well of ourselves, I would add, that there is probably no other people upon earth who could be kept quiet by so light a pressure. The government and the people are suited to each other. Long may they continue so.

The congress of the United States, the immediate representatives of the people, and immediately accountable to the people, are the fit depositories of such a power as that now claimed, for it concerns the general welfare. They have no motive to abuse it ; and if they were so inclined, they cannot abuse it, because they have no power to impose the condition. The state may, at her pleasure, reject

the offer, and remain in her territorial condition, where she will be subject to the unqualified power of congress.

It must be manifest to every one who has reflected upon the subject, that there are terms which are obviously salutary and proper, and necessary to be proposed upon the admission of a state. When Louisiana asked to come into the union, did any one doubt, that it was right to require, that her legislative and judicial proceedings should no longer be carried on in a language unintelligible to the other citizens of the United States, without the aid of an interpreter? There are terms, too, which would be manifestly improper, and there are terms, I freely acknowledge, which would be incompatible with the constitution. There must be a discretion somewhere, to judge between the two first classes. Our government would be incomplete without it. Where can the power be so safely lodged as with the congress of the United States, to decide what terms the general interests require to be proposed? They have never yet abused it, and I think there is no danger that they ever will. But where do the opponents of the amendment propose to lodge the power? Leave the state free, it is said; let her adopt such a plan of government as best suits her own circumstances. And is there no danger to be apprehended from that quarter? Supposing her to be competent to judge what is best for herself, or most for her own advantage, (of which, if she desire slaves, I must be permitted to doubt,) yet, as she claims to become a member of this union, the general interests are involved in her decision, and her views may not be those which best comport with the public welfare. Of that she is not in any sense as competent to judge as those who are entrusted with the care of the concerns of the whole.

Is it too much then to say, that the right to judge of terms which are not incompatible with the constitution, belongs to the union, and to congress as the admitting power? It is essential that it should be so, for the sake

even of the state applying for admission. I have immediately at hand an illustration, and if I mistake not, a most cogent argument, to which I invite the particular attention of the delegate from Missouri. I feel nothing but good will for that gentleman, and nothing but good will for his constituents, whom he represents here with so much zeal and ability; and I submit this matter for his and their consideration. It is not to be denied that congress have the power to fix the limits of the state, and that they are not obliged to give her all the territory comprehended in the boundaries stated in the bill. This is entirely within their control. Suppose congress should be of opinion, that if Missouri is to be a slave state, her northern boundary ought to be the river, cutting off the large and fertile tract of country that lies beyond it: but, if she will adopt the proposition of the amendment, she ought to have for her domain the whole territory within her present limits. Might not congress propose to her the alternative, take the restriction and you shall have all the territory; reject the restriction and you shall not go beyond the river? Something of this kind is very likely to happen, and it may hereafter appear that Missouri is contending for a principle that will operate much to her disadvantage. For my own part—and I speak only for myself—I most freely and sincerely declare, that if the restriction be not agreed to, I will vote for reducing Missouri to the smallest limits that are consistent with the character of a state. If the restriction be agreed to, I will vote for giving her such boundaries as will secure her grandeur and comparative importance.

From the view which I have now endeavoured to take, it will follow, that whoever objects to any condition proposed, as beyond the power of congress, must fail unless he show, *that the particular condition is incompatible with the constitution of the United States: that it is such a condition as the state has not a power to assent to.* I am very

sensible that the question which arises here, is interesting and important, and that it is delicate, though otherwise I think not difficult. No one who has a feeling of regard for his country, can be indifferent to the sensation it occasions in this house, nor perceive, without some emotion, the line of division it marks. Yet it is a question that is before us ; it is a question we must meet, and while we owe it to our country to meet it fully and fairly, we owe it to each other to meet it with mutual respect and forbearance. I will concede even more :—we are not to entertain, much less to express a thought hostile to the rights of the inhabitants of those states where slavery exists ; and in any thing I may say, I hope it will always be understood, that I consider those rights entitled to the protection of all the power of the country, without reference to any other consideration than that they are acknowledged by the Constitution. Among the many evils of slavery, it is one, that where it exists, it can scarcely be freely discussed, and yet there may be occasions when its free discussion is of the greatest importance. The same kind of difficulty existed at the formation of the Constitution. It was not removed by crimination, or suspicion, or threats ; it was adjusted upon the basis of an existing state of things !

Is this condition, then, incompatible with the constitution of the United States—so incompatible that a state cannot assent to it ? For if a state might voluntarily surrender it, congress may require its surrender as the term of admission. With what part of the constitution is it incompatible ? It interferes with no express provision of that instrument. It must then be implied. What an implication ! Instead, however, of pointing out the parts of the constitution from which this implication can be made, state rights are immediately sounded in our ears—state rights are invaded and violated. Sir, “state rights” is a phrase of potent efficacy, and, properly understood, of sacred regard. But what are state rights ? They are ample—they are invi-

olable; they are the sure foundation and the lasting security of our liberties, and, I hope I may add, they are in no danger from the present proposition. But, I must be permitted to say, there are rights of the states who were parties to the constitution, and rights of states afterwards to be admitted into the confederacy. Will it be contended that they are in all respects identically the same, or that a new state is not upon an equal footing with the original states, unless it possesses precisely the same powers? A moment's attention will show that it cannot. Before the confederation, the thirteen states who composed it were *in all respects* sovereign and independent states, possessing all the attributes of sovereignty. The confederation was of sovereign and independent states, united only for certain purposes of common concern, in the management of which they acted as states. When, in the course of events, these states came to form a more intimate union, they presented to the convention points in which they agreed, and points in which they differed. They were respectively sovereigns of all the soil within their limits, and proprietors of all the vacant land. They were sovereigns for all the purposes of foreign as well as domestic legislation; and no new confederate could be admitted but by common consent, and upon such terms as the existing states might think fit to prescribe. There were, too, accidental diversities among them, of which I need only mention one, the existence of negro slavery in some of the states, permitted by their laws and incorporated into their institutions.

With respect to the *existing states*, it may truly be affirmed, that they were left in the possession of every power and right, which was not conceded by them to the union. They derived no right or power from the constitution, they only retained what they before possessed, without inquiry into the nature of its origin. The extent of this reserved possession is more easily understood than defined. It is sufficient for the present purpose to say, that

it comprehended all the power of slavery, as an *existing state, or condition* which they did not choose to renounce or relinquish, and perhaps had it not in their power to extirpate, if they had so desired. The constitution was thus the creature of the states; the work of their own hands. But what is a new state? It is the creature of the constitution, deriving from the constitution its existence and all its rights, and possessing no power but what is imparted to it by the constitution. If it have a power to establish slavery, it derives that power from the constitution, *and the constitution becomes stained with the sin of having originated a state of slavery.* What a reflection would this be upon that instrument! How is it calculated to diminish the sacred regard that has been felt for it here and abroad! Up to the present moment, no such charge can be made against the constitution. With respect to the existing states, it only tolerated what it could not remove; and in the case of Louisiana, it submitted to circumstances equally uncontrollable. But, (and I say it with pride and with pleasure,) it never yet has conferred a power to establish the condition of slavery, and I warn those who are entrusted with its administration to beware how they claim for it the exertion of a capacity so odious.

But we are told that every thing is implied in the use of the word "state"—that the constitution, when it speaks of the admission of new "states" into the union, necessarily means that they should possess certain faculties and powers, of which it is also contended, that the precise definition is to be found in the faculties and powers possessed by the original states—I admit, unhesitatingly, that there are rights so inherent and essential, and, if you please, inalienable, that a state cannot surrender them, nor exist as a member of this union without them. But, is it essential, by the principles of our constitution, to the character of a member of this union, (a newly admitted member, especially,) that it should possess all the *powers*, or even all the



*rights*, that belonged to the original states? It must then be the sovereign of all the territory within its limits, which has never been the case in a single instance of a state newly formed out of the territory of the United States. It cannot be the case, for, by the practice of the Government, the admission is made to depend upon the number of the inhabitants, and not upon the appropriation of the land. The unappropriated lands belong to the United States.—Even its limits are settled by Congress.—It must, too, have an unlimited right of taxation—and it must have an independent and absolute power, extending to every thing within its limits—for all these powers belonged to the original states. Then, sir, not a single new state, (excepting Vermont,) has been properly admitted into the union, and the practice of the government, from its first foundation, has been one tissue of error and usurpation.

In every instance, some restriction or curtailment of legislative authority, more or less extensive, has been imposed and assented to, with universal approbation. In the case of Kentucky, as we have seen, Virginia stipulated, among other things, that for a limited time the lands of non-residents should not be taxed higher than those of residents, and that the lands of non-residents residing in Virginia, should never be taxed higher than those of residents. This is a palpable restraint upon the exercise of a legislative authority, which every one of the existing states possesses without restriction, and yet it never has been supposed to place Kentucky in a condition of inferiority to her sister states. I will not tire the patience of the committee, by going through the other instances, which have been already very fully brought into view. Enough has been said to show, that it has never been thought requisite, that a new state should possess the same identical powers which confessedly belonged to the original states, and that such identity is not necessary to a perfect political equality.

To come nearer to the question, I beg leave to ask, is it

essential, by the principles of our constitution, to the character of a *state*, that it should have the power of originating, establishing, or perpetuating the condition of slavery within its limits?

I request gentlemen to pause before they answer this question, and to look it fairly in the face, for it must be met. Is it essential to the character of a free republican state, that it should have the power of originating, establishing, or perpetuating a system of slavery—so essential, that it is not a free republican state without the power, nor qualified to be a member of this confederacy?

Can it be possible, that a constitution framed to secure, to preserve, and to extend the blessings of liberty, itself rests upon a principle so impolitic and so indefensible as this? I should very much fear, that we neither expect the favour of Heaven nor the approbation of men for a constitution so constructed—whose professions were so entirely at variance with its principles. Can it be pretended, will any one be hardy enough to assert, that this power belongs to the rights of self-government, or of a just sovereignty, or that it is to be arranged in the same class with the authority exercised by every well constituted society, in regulating the domestic relations? Where slavery exists, it may be, (as was said by a gentleman from Virginia,) that slaves were regarded as in a state of perpetual minority. It might with equal propriety be said, at once, that they are regarded as in a state of perpetual subjection—it amounts to the same thing; for surely no man will seriously affirm, that this decree of perpetual minority, has its source in the same feelings and views, which in all civilized nations, have led to the enactment of laws for the protection of infancy against its own folly and imprudence. The one originates in parental affection, anxiously providing for the welfare of its offspring, during the period when by nature the judgment is weak and the passions strong; and every incapacity which the laws have established, is meant as a shield for

infancy against danger to itself. The other, has it any view to the comfort or well-being of this perpetual minor? I will not pursue the inquiry, lest I should wound the feelings of some who hear me, and whom I would not willingly offend. Where slavery exists, you may call it what you please—you have a perfect right to do so, and to regulate it by such laws as you deem best—but in a discussion like the present, it seems to me an utter perversion of language to style it a minority, as it would be an utter perversion of sentiment, to suppose that it has any resemblance to the endearing relation out of which the laws for the government of infancy have grown.

How is this power essential to the character of a free republican state? Suppose this evil were now happily extirpated, is there any moral or political competency under the constitution to restore it among us? Has any one ever seriously contended for such a power? No: it certainly could not be re-established, without the consent of congress, and yet, I think it will scarcely be asserted, that the states would not still possess all the essential powers of self-government, and a just sovereignty; that they would not be as free, as independent, as happy, and at least as powerful as they now are.

Upon what footing then, do the original states stand in this respect? Did the constitution either give or reserve to them the right of originating or establishing a state of slavery?—Have they now, or have they ever had such a right? Is there a right, in any of them, to reduce a free man to a state of slavery except as a punishment for crimes of which he has been legally convicted, and not extending to his offspring! The great principles of the constitution are all at variance with such a doctrine. It is plain enough how the convention considered the matter, and how it was considered by the states, individually and collectively. They regarded it then, as they regard it now, as an unfortunately existing evil, of which it was impossible to rid them-

selves, and which therefore they must manage in the manner most conducive to their safety: an accidental and deplorable state of things, not to be terminated by any means which human wisdom was then able to devise. It was upon this footing, that which is called the compromise took place—it was a compromise with an *afflicting necessity*, and mark well the manner of it! It was a *silent compact* between the existing states, upon a subject which they all felt was beyond their power to deal with. That *silence*—that most emphatic and impressive silence of the constitution, is the sure indication of the feelings which prevailed in the convention. What could they say? They would not utter the word slave or slavery, and whenever they found occasion to make any provision on the subject, they had recourse to other language, as if the very terms were hateful and offensive, and unfit to be employed in that instrument. What could they do? They could only indulge a hope, that a time would come when this evil might be eradicated, and in the mean time they bore their testimony against it by that expressive silence, of which no one could mistake or misunderstand the meaning.

That compact, not of words, but of silence, had the precise effect, while it avoided a recognition of the legitimate origin of the evil, of leaving every one of the then existing states in possession of the power which it actually exercised, except so far as it was parted with to the union. The ambiguity in the constitution, if any there be, arises altogether from this well meant mode of treating the subject. What the framers of that instrument intended should signify their detestation of slavery, has furnished an argument in favour of its extension. For, as silence left the existing states in possession of the power, so silence is interpreted, in the admission of new states, to confer the power; and this rule of construction throws upon congress the necessity of an active exertion of authority for its restraint, for which gentlemen insist we must show a positive grant.—But, with

respect to the existing states, it was a power paramount to the constitution itself, and which no state surrendered ; a power, however, and a necessity, too, confined to her own limits.

Can this be affirmed with truth of any state newly admitted into the union ? Can it be said to stand upon the same footing as the original States, either as to paramount power, and existing condition, or the case of necessity ? Up to the moment of admission, it is subject entirely and exclusively to the government of congress, as a part of the Territory of the union.—It presents itself to congress, as a Territory, asking to become a state, but bringing with it no state rights—no state powers—nothing to be reserved, but every thing to be received. It presents itself free from the condition of slavery, or subject to it in so slight a degree as to be easily manageable, and affording no just ground for its continuance. Unless, therefore, it can be shown, that it is so essential to the completion of a free republican state of this union, to have the power of originating or perpetuating slavery, that it cannot be free and republican without it, the argument must fail altogether. Besides, Sir, how can the rights of the new states be affected ;—it has the choice of coming in upon the terms, or not coming in at all.

I am aware, it may be said, that the compact between the existing states, ought to be considered as a mutual stipulation, with each other, that new states should in this respect be left free to choose for themselves. It is no where said so, and to me it seems worse than idle to suppose, that there is a dormant abstract principle in the constitution, in favour of slavery, to spring up only as a barrier against what is, and always has been conceded to be right and just. Show me the value of it, in practice, and I am then prepared to listen to the deduction ; but, as long as the argument terminates only in evil, or which is the same thing, in preventing a good, so long exactly it is impossible for it

to find its way to the hearts or the understanding of men. When, not long ago, it was affirmed in this house, that the constitution gave to congress a power to make certain public improvements—to open the channels for wealth and trade to flow from one quarter of the country to another—to approximate them to each other, to connect them by the ties of interest and mutual dependence and mutual regard, I listened with attention and pleasure, for I expected to find a power so beneficent. So, sir, if I am told that there is a power in the constitution to arrest the march of slavery, to extend the sphere of freedom, personal as well as political, that too, I expect to find. But, when I am told, that there is a silent, dormant principle in the constitution; a sullen power that forbids us to check the extension of slavery, I confess to you, that I involuntarily shrink from the process of reasoning by which it is deduced, and revolt involuntarily from the conclusion. If it be apparent, I must and I will submit to it; but if it be not clear, I am not disposed to search for it, either among the high attributes of sovereign power, or the more frequent refuge of state rights.

But, I admit that this assertion is true, as to every rightful and essential power, which belongs inseparably to republican self-government, or is necessary to place a state upon an equal political footing with her sister states, and render her worthy to be a member of the confederacy. As to the rights of self-government, I have nothing more to say. It only remains to enquire, whether the proposed restriction disturbs or interferes with any of the great political rights of the state, or is calculated to lessen her weight and influence in the scale of the union? The great and important right of every state, is that which regards her representation in the national councils. Is that impaired by the restriction? The compromise of the constitution, in the article of representation, was founded upon a simple, and now well established principle, applied to preserve the

balance of the existing states. It was not, that property was to be represented—for then, every kind of property ought to have been estimated in fixing the ratio—but that this particular kind of property, occupied the place and consumed the food of a free population, and to that extent lessened the comparative numbers of the state, not for a time only, but forever. If the free population had furnished the ratio, how many representatives would Virginia now have? To preserve the balance of the states, then and thereafter, the rule of three-fifths was adopted, and with this rule, the constitution considers that there is a fair political equality between the free states and the slave states. Can it be said, that the political rights of the state are in this leading and all-important point impaired by the restriction? In point of fact, her influence and power are increased, for the free population will increase more rapidly than the slave population, and she is entitled to a representation for the whole number, instead of being limited, as to a part, to three-fifths. Whoever will take the trouble to examine the comparative increase of the two descriptions of states, will be satisfied of this, and I have no desire to obtain for the free states the advantage hinted at by a member who has opposed the amendment, of infusing into the states to be formed, a debilitating disease, which will stint their growth and lessen their political weight in the union. The political right of a state, secured by the constitution, is, if there are slaves, to apply to them the rule of three-fifths, and that right, I admit, cannot be infringed.—But it is not necessary to the enjoyment of the full benefit of the principle of representation, nor fairly to be deduced from it as a part of the compromise, that a new state should be permitted to have slaves.

I may be allowed again to ask, what are the political rights of a state in regard to the union? They are the political rights of the free inhabitants, the only condition known to the constitution. *Slaves have no political rights.*

*They are acquired by force, and they are held by force ;* and if it be lawful to hold them at all, it is also lawful to use any degree of force that is necessary to hold them in quiet subjection. Every law of a slave holding state, which provides particularly for this condition of men, by peculiar exertions of authority, by an unusual discipline, or by unusual terrors and punishments, having no view to their own benefit, but only to the safety of their masters, is *an exertion of force*, necessary (where the condition exists) for the security of society, not to be mentioned reproachfully, much less to be interfered with, *but still a mere exertion of force demonstrating that slaves have no political rights.* They add nothing to the mass of rights. I would not be understood to question the power of the states where this condition exists. Whether it is a power reserved, or a power acquired, it is, as to them, recognized by the constitution, and entitled to the support and protection of the whole strength of the union. We may have our wishes and our feelings on the subject—it is for them alone to decide, how long this state of things shall continue. If ever the time should come, when they shall be able and willing to rid themselves of the evil, it will be hailed with unaffected delight. Till then, while this constitution endures, we have no right to ascend beyond its provisions, and we are bound to carry them fully into effect. The state which I have the honour to represent, has been as ardent and sincere in the cause of emancipation as any state in this union. But she has never lost sight of her obligations to her sister states. Her laws and her judicial decisions will be found to be in strict conformity with the constitution, and so they will continue to be.

If the members of the convention meant to frame a compact between the states, to the effect which has been mentioned, that is to say, that every new state should, in this respect, be left entirely free, we might reasonably expect to find it somewhere in the constitution. It could not have



been forgotten or overlooked—it was a subject in itself of too much interest and importance: and, besides, the ordinance of 1787, was adopted, while the convention was sitting that framed the constitution, and that ordinance provided for the admission of states, with a perpetual inhibition of slavery. Under the confederation, it had been assumed as a power belonging to congress, and exercised as a power fit to be exercised by congress. It is incredible, that the constitution should have designed to disaffirm all this, and yet have said nothing about it, but conferred without limitation the very power to which it had become an established incident.

Can any good reason be assigned why the existing states should have entered into such a compact? It was not necessary to the compromise, which regarded only the actual condition of the states, and which meant to preserve to each of them, nothing more than the power within its limits. The constitution was not formed for a day or a year, but for a succession of time, I hope for ages; and it might easily have been foreseen, that cases would probably occur, in which the exercise of such a power by the government would be of the utmost importance. Suppose the case of a distant or a frontier state applying for admission. If you permit her to have this kind of population, you are bound by the constitution to protect her with all the means of the union, against the insurrection of the enemy within her bosom, and against the inroads of any foreign nation. You are bound, even to secure to her the enjoyment of this very property, and if a neighbouring power, should by force or seduction, carry off her slaves, it would become a cause of national quarrel and of war. Our own recent history gives us an example of something of this sort. What was the Seminole war? The runaway slaves of Georgia, combining with outlaws and Indians in Florida, carried on hostilities upon the borders of Georgia, and that state (as she had a right to do) called upon the

United States for protection. It was granted, and hence the Seminole war. If a new state, circumstanced as I have supposed, should apply for admission into the union, would it not be reasonable, nay would it not be essentially just and necessary, to require her first to stipulate, that she would not introduce that source of weakness and that cause of quarrel, which might be so expensive and burthensome to the union? It ought not to be a concern of the state alone, because it may become a charge to the nation.

I think I may safely affirm that this is the practical, established construction of the constitution, used and approved from its adoption to the present day. But permit me for a moment to examine the spirit of that instrument. If, as is clearly shown, the toleration of slavery by the constitution, and the corresponding provisions, were owing to an incidental, existing and uncontrollable necessity, then it is plainly the spirit of the compact, that the power should never be permitted to a new state, but where the same imperious circumstances exist to demand it, as in the case of the original states. Such was the fact in the instance of Louisiana.—What, then, is it, that congress are to do upon such an occasion? To impose conditions, arbitrarily? No. To judge of the circumstances, regarding in due proportion the interests of the state and the union. If that deplorable necessity exist, they permit in silence, what (like the framers of the constitution) they will not in terms avow. If not, they adjudicate by the restriction, which it is then their moral and constitutional duty to impose.

This is the true, it is the necessary, and only just construction of the constitution—the only one that is consistent either with the professions we have always been in the habit of making, or with the hope that was certainly once very much cherished, that a mode might some day be devised of abolishing this great evil. We may assert as we will, that we are not in favour of slavery; as long as it

shall be seriously insisted, that by the constitution of our country, every new state has the inherent and inalienable right of establishing domestic servitude, so long our professions will be disbelieved, and we ourselves, as well as that venerated instrument, be charged with hypocrisy. Suppose, sir, that the existing states were in a course of abolition, would it be permitted to a new state, governed by some selfish or ill judged views of interest, to revive the condition of slavery, and thus to control and defeat the policy of all the others? Ought it to be in the power of any new state, to enlarge the region of slavery, and thus to increase the difficulties, already sufficiently great, presented by this very difficult and embarrassing subject? Can it be, that we sincerely believe it to be an evil, and yet will gravely insist that it is a right of every new state, to do what? I was going to say, enjoy this evil, but that would be a perversion of terms—afflict and injure herself, and her associates too, by admitting it within her limits? If it be a good, the argument is intelligible: If it be even doubtful, there is still some scope for choice; but if it be an acknowledged evil, it seems to me extravagant, if not absurd, to contend that there is a right to have it, and that a prohibition restrains or impairs the just liberty of a new state.

This construction too is plainly indicated by at least one provision of the constitution, I mean the 9th section of the first article. "The migration or importation of such persons as any of the states *now existing* shall think proper to admit shall not be prohibited by congress prior to the year 1808." Why is this restraint upon the power of congress, confined to the states "*now existing*?" It was to give to congress the power, immediately, to prevent the introduction of slavery into the states to be formed. I do not doubt that it had a particular reference to the ordinance of 1787, and was meant to guard against the inference, that congress had not the authority to complete the work the ordinance had begun. For if the restraint had been gene-

ral, comprehending the states to be formed, as well as those existing, congress could not within the twenty years have prohibited the "migration or importation" of slaves, into the states to be admitted into the North West Territory; and then, one of two consequences must have followed, either congress would have refused to admit the states within the twenty years, which would not have been consistent with the engagements entered into, or they must have admitted them with the power of receiving slaves, which would have been contrary to the provisions of the ordinance. It is therefore, I say, that this section of the constitution had a plain reference to the ordinance; and while it evinces in the clearest manner, a constitutional distinction between the existing states, and states to be admitted, upon the very subject now in question, and plainly intimates a design to give a control to congress over the introduction of slavery into states to be formed; it also seems to me to afford a constitutional sanction to the ordinance itself.

The view which I have thus, I fear at too great expense of time and patience to the committee, endeavoured to present, is to my mind so conclusive, that I should hope it would be unnecessary to detain them longer. But, there has been all along an assumption, by those who are opposed to the amendment, which I think extremely questionable, if it be not wholly unfounded. It is assumed, that the condition proposed by the amendment, will produce an inequality between the state to be admitted, and the existing states. It is not material (the inequality being of no consequence,) but I mistake if I may not safely deny that it will occasion any inequality at all. Sir, has any state in this union a constitutional capacity to originate or establish a state of slavery? To be more precise—If a state, (Pennsylvania, for example,) has once abolished slavery, has it a power, without the consent, and against the will of congress, to restore that condition? This is an interesting, but I think

it is not a difficult question, and certainly it is not a dangerous one to discuss. No state, that has once abolished slavery, will, I believe, ever desire to restore it. And here, Sir, I invoke to my aid the great principles of the constitution, and the great truths of the Declaration of Independence. I invoke, too, the principle of the compromise, founded as it was upon an existing state of things, and recognizing no rights but what necessity conferred.

The reduction of a fellow creature to slavery, to a state where nothing is his own but his sorrows and his sufferings, is, if you please, an act of sovereign power, that is of sovereign force, which obeys no law but its own will, and knows no limits but the measure of its strength. If these states were sovereign, they too like other sovereigns might exert a lawless power. It would nevertheless be morally wrong. But, they are sovereignties, qualified by the grants of power to the union, and by the great political principles upon which all our institutions repose. The sanction of these principles is now added to the force of moral obligation; and the beautiful feature of our government, that which entitles it to the respect of strangers, and to our affection, that which distinguishes it from all the governments that have ever existed, is to be found in this single truth. Such is its structure, that it can do no lawless violence, and whenever we speak of sovereignty, we mean a rightful moral sovereignty, and not a power to do whatever it has strength to accomplish.

Whence, then, can a state derive such a right, I mean a right to originate or re-establish slavery? It cannot, by force, reduce freemen to the condition of slaves. This no one would undertake to maintain. It cannot draw them from abroad, for congress have the unquestionable power to prohibit importation. Can it receive them from other states of this union? The supposition imputes to the constitution the greatest weakness, and is wholly inconsistent with the hope entertained by the great men who framed it, that

this evil might some day be abolished. I think this channel is stopped, as it ought to be, by the power of congress to prevent importation and *migration*. Importation, we all understand to include slaves brought in from abroad, from any foreign territory, whether by land or by water ; and we all agree, that it is sufficient to comprehend in its interdict, every bringing in of slaves from abroad. The term "migration" it applied to the same description of "persons" and upon the plainest principles of construction must be understood to apply to something different from "importation." What can it apply to, but the passage or transfer of slaves from one state or territory to another? An argument urged by the member who last addressed the committee, (Mr. Clay,) I mean the argument derived from that part of the constitution which denies to congress the power of imposing a duty upon exports from any of the states, strongly supports this interpretation. The two clauses, taken together, (and they are in the same section,) amount to this: you shall not prohibit the "importation" until after the year 1808, but in the mean time, you may impose a tax or duty upon "such importation" not exceeding ten dollars for each person: you shall not, during the same period, prohibit "migration," but can you impose a duty or tax? No. The authority to impose a duty or tax is dropped, and why? Because migration, meaning, (as we insist,) a transfer from state to state, includes in every instance, the exportation *from a state*, and therefore by the fifth clause of the same section, no "duty or tax" can be laid upon it.

Various interpretations of this clause of the constitution have been attempted by those who are opposed to the amendment, but none of them, I think, consistent with the fair import of the terms, or the manifest spirit of the constitution. One gentleman indeed, (Mr. Smith of Maryland,) has said, some days ago, that it was intended to give to congress the power to prevent the passage from one state

into another of slaves imported into the former from abroad. His long experience and knowledge entitle the suggestion to great consideration, and it appears to me to concede the precise construction contended for. He admits that the clause applies to *slaves*, and the term "migration" to slaves transferred from one state to another. Now, as there is no description of the kind of slaves, which limits it to slaves imported, it must apply to all slaves. I will not insist upon the advantage of this concession; the case is fully made out without it.

But we are told by the gentleman from Delaware, that the technical meaning of the word migration, is a change of residence from one country to another. I must be permitted to say, that I am not aware that the word in question has ever received a technical meaning. We call those words technical which have been appropriated to the service of an art or science, and in relation to that art or science have received a definite and somewhat artificial sense, well understood by those who are acquainted with the subject. Thus, when we speak of an "estate tail" or "a contingent remainder," the language is perfectly intelligible to a lawyer. The term, *migration*, has never to my knowledge been so appropriated, unless it may be considered as having been adopted by naturalists as descriptive of the habits of certain animals, and then it means simply a change of climate, for the sake of temperature, or a change of place for the sake of food; but not a change of country. In its vulgar sense, that is, its common sense, as given to us in dictionaries, as used in conversation, or by approved writers, it means only a change of place. In two pages of Dr. Seybert's Statistical Annals, (37, 38,) the word is three times used to denote the change or transfer of residence from one state to another; and, it may be remarked in passing, is accompanied with a reflection which well deserves the attention of those who insist so strenuously upon the free admission of Missouri, in order that the owners of

slaves may be enabled to go into that state. "It is important to consider how far the diffusion of our population may weaken us as a nation, and what will be the effect of the *migrations* on the agriculture of the Atlantic states? Many valuable farms, originally productive, have been abandoned, after they were exhausted and made barren from constant cultivation, and no application of the means to restore their lost fertility. If *migration* be continued under these circumstances, some districts will hereafter exhibit all the features and poverty of a desert, and extensive tracts of valuable land will be a waste, to the injury of our agriculture, manufactures, and commerce. In many of these situations, industry would be abundantly rewarded for all the labour and expense of renovating the unmanaged and impoverished soil." I am reminded by some one near me, of another difficulty supposed to be in the way of our construction, and that is, that migration means a *voluntary* change of place, and that the removal of a slave is without his own consent. Even if this were correct, it would amount to nothing. The will of a slave is always the will of his master, and his acts, whenever they are in obedience to his master's orders, are by the constitution and laws deemed to be voluntary.—What other term could have been employed? We are to remember, that though the slave is regarded as property, yet is he also regarded as a "person," a human being, having a will, but that will ever in coincidence with the wishes of his master, and it is from this anomalous composition of character, that the constitution itself had great difficulty in finding terms applicable to his condition or conduct.

We have been told, too, (for the attempts have been numerous to avoid the force of this clause) that it applies to freemen coming from abroad. It would be very extraordinary, indeed, if the same word, in the same sentence, were to be interpreted to include two descriptions so opposite as freemen and slaves.—But all this is minute verbal



criticism, and I fear I shall fatigue the committee by dwelling upon it. There is a much broader, and still more satisfactory answer to the objection. The clause in question has always been understood to apply to slaves, and to slaves only, from the adoption of the constitution to the present time. It is, (and that is entirely conclusive) a restraint upon the power of congress, insisted upon by the slaveholding states, to secure for a limited time the right of supplying themselves with slaves. This is familiarly known to every person, who has any acquaintance with the history of the constitution, and it is known, also, that two of the states (South Carolina and Georgia,) would not have come into the union without it. How any one, knowing these things, can gravely assert, that the clause has any provision relating to freemen, it is entirely impossible for me to conceive. It imputes either mistake, or foolish design to the framers of that instrument, for no good reason can possibly be assigned, for withholding from congress, during the twenty years, any power it possessed, over the admission of freemen, though we know well the reason (good or bad) for restraining the power as it respected slaves.—I need not notice the observation of the member from Delaware, that this, being a Federal power, must be understood as applying in its exercise to the union, and not the states. Every power, to be exercised by congress, is a Federal power, but it does not follow that it is not to operate upon the states. This, in particular, by its very terms, is to apply to the states individually. But I hasten to another objection, which has been very seriously urged, and, if well founded, renders all this examination superfluous. We are informed, that the clause in question is not a grant of power, it is only a restriction or restraint upon power. To speak with perfect precision, it is an exception or restraint for a limited time, upon the exercise of a power.—Such an exception, it is most clear, is conclusive evidence of a grant; for if there were no power granted, there could

be no exception from or restraint upon its exercise. It is of itself equivalent to a grant of the power, after the expiration of the time. A rule of this house directs, that strangers shall not be admitted during the time it is in session. Would any one doubt that this gives permission to strangers to enter at other times ?

If this interpretation, however, (contrary as it is to the plain design of the constitution) were correct, still there would be no difficulty. It follows immediately after the enumeration of the powers granted to congress, and among them we shall certainly find that which was intended for a time to be restrained, unless we suppose the framers of the constitution to have misunderstood, most grossly, their own work. If there be some ambiguity in the language, it arises from the remarkable reserve of the convention, upon a subject which they did not choose to call by its proper name, and that ambiguity ought to be favourably expounded. Congress, then, have a power, "to provide for the common defence, and general welfare," and for that purpose they have a specific power to "regulate commerce with foreign nations, among the states, and with the Indian tribes." *Slaves* are every where articles of trade, the subject of traffic and *commerce*, bought and sold, from place to place, and from hand to hand, by public sale or by private sale, as suits the convenience or interest of the owner, and are in all respects treated as property. The general power to regulate commerce, includes in it, of course, a power to regulate this kind of commerce. With respect to slaves imported from abroad, this has not been disputed and cannot be disputed—while it continued, it was a branch of the trade with foreign nations. The power to regulate commerce "among the states" is given in the same clause and in exactly the same terms as the power to "regulate commerce with foreign nations." If the latter authorized congress to prohibit the importation of slaves from abroad, (which has never been even questioned,) how

can it be doubted that the former gives them authority, when in their opinion the "general welfare" or the "common defence" require it, to prohibit the transportation from state to state? If one comprehends slaves, so does the other, and if this conclusion had never been carried into practical effect, it would only prove that no case had occurred in which congress thought it expedient to exert the power. But, this construction is obviously necessary to the plain design of the constitution, not only to the large and liberal views with respect to the whole subject of slavery, of which I will speak hereafter, but the particular design manifested in the very clause now in question. It is conceded that congress might at all times prohibit the *importation* of slaves from abroad into the territories of the United States, as well as into states formed after the constitution, the restriction until the year 1808, being confined to the states then existing. Of what avail was this power, (however derived,) unless they could also prevent importation through other states, or rather the passage of newly imported slaves from the old states, into new states or territories? Sir, this construction, in itself so reasonable, has actually been adopted in practice. By the act of 1804, for dividing Louisiana into two territories, and making provision for the government of the southern portion, it is enacted, that no slaves shall be imported from abroad, and none shall be brought *from any port or place within the limits of the United States that have been imported since the first day of May, 1798*—or shall hereafter be imported. It is no answer to this to say, that the slaves of a man migrating from one state to another, are not carried thither for the purpose of commerce or trade, but are a part of what has been called "his family." The power to regulate commerce, extends to every thing which is the subject of traffic, and is limited only by the nature of the article, not by the intention or views of the owner; or else, every law for the regulation of trade would become ineffectual—

slaves may be carried for the purpose of selling, and even when this is not the original intention, they may nevertheless be sold, and a man, after disposing of all his "family," may return and buy another family, and afterwards sell it. They are articles of traffic, and that is enough—neither is it any answer to say, that the power in question is a power to be exercised by legislation, and not in the form of a condition to be prescribed to a particular state. If it exist at all, of which I hope there is now no doubt, we arrive, after this, I fear, very tedious investigation, at a result decisive of the present controversy. For if the exposition given be correct, it will follow, that no state in the union, having once abolished slavery, can re-establish it without the consent of congress; and that it is no disparagement of the rights of a new state to lay it under the same prohibition. There is then a precise and perfect equality.

But, notwithstanding any supposed ambiguity in the constitution, arising from the cause I have adverted to, there are great leading points in that instrument, which were intended to stand out upon occasions like the present, as guides and marks to direct our steps, and it is a relief to ourselves, as well as a debt of justice to those who framed the constitution, to keep them constantly in view. We can see there, plainly asserted, the political and personal equality of men—a deep and humiliating sense of the evil of slavery—a hope that it might at some time be abolished, and a determination as soon as possible to abolish it. From the date of the constitution to the present moment, these have been the governing principles of this nation's conduct, and the present is the *first* effort to arrest a career urged equally by policy and humanity. If Missouri be permitted to establish slavery, we shall bring upon ourselves the charge of hypocrisy and insincerity, and upon the constitution a deep stain, which must impair its lustre, and weaken its title to the public esteem. It is to no purpose to say, that the question of slavery is a question of state concern.

It affects the union in its interests, its resources, and character, permanently—perhaps forever. One single state, to gratify the desire of a moment, may do what all the union cannot undo—may produce an everlasting evil, shame and reproach. And why? Because it is a state right. Sir, you may turn this matter as you will; Missouri, when she becomes a state, grows out of the constitution, she is formed under the care of congress, and admitted by congress; and if she has a right to establish slavery, it is a right derived directly from the constitution, and conferred upon her through the instrumentality of congress. We cannot escape from our share of the blame, and, (which is infinitely worse,) we cannot rescue the constitution from the opprobrium which belongs to such a deed. That refined construction, which makes the constitution a silent and acquiescing accessory, looking with undisturbed complacency upon what it professes to hold in detestation, may answer the purpose of argument here, but it can avail nowhere else. The judgment of mankind is not formed upon artificial distinctions like this. As surely as the tree is judged by its fruit, will the constitution be judged by what it produces. I earnestly beseech gentlemen, then, to save the constitution from a stain which has never yet been fixed upon it, and with this entreaty, under the deepest and most sincere feeling, I leave it in their hands.

2. Upon the subject of the treaty of cession, I will detain the committee but a very short time. It has always appeared to me to be a proof of the weakness of the argument against the amendment, that it was obliged to resort for support to this topic, because it supposes that the inhabitants of the territory of Missouri have higher rights and privileges than the citizens of any territory within the original limits of the United States. One gentleman says, indeed, that Missouri derives her right from Heaven. If so, there is an end to all question about the constitution or the treaty, though it might be extremely difficult for some

of us to understand, how from such a source could be derived a lawful power to establish slavery.

If we are bound by treaty stipulations, it will be admitted that they must be fulfilled. The public faith is to be preserved inviolate, at every hazard of consequences. But, before we admit a construction so dangerous as that contended for, let us examine carefully the extent of our obligations.

There are none, I suppose it will be conceded, who can call the treaty to their aid, but those who were inhabitants of the ceded territory, and subjects of the ceding power, at the time of the cession. In terms, the article in question applies only to them. Suppose it had all been vacant territory at the time of the cession, and since peopled by citizens of the United States. Would it have been seriously asserted, that they acquired any new or higher privileges or rights, by migrating to Louisiana? As to the original inhabitants themselves, it is a question, not of legislative, but of judicial cognizance, for a treaty is the supreme law of the land. The condition, however, such as it is, is not annexed to the *territory*; it is a stipulation in favour of the free inhabitants, and as to them, it has no application, after they have become incorporated into the union, and are made citizens of the United States—they then become subject to the legislation of congress.—The distinction between the territory and the inhabitants is so obvious as to be perceived at a single glance. The one is simply ceded, transferred in sovereignty, which places it exactly upon the same footing as any other territory of the United States, without any condition. The other, that is, the free inhabitants, are also transferred, but with a stipulation entirely personal, that *they* shall, as soon as possible, “be incorporated in the union, and admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States,” and “in the *mean time* they shall be maintained and protected in the free enjoyment

of their liberty, property, and the religion which they profess."

How it was intended to make them citizens, I do not pretend to know. Certainly, a treaty cannot confer the privileges of citizenship; that can only be done by the operation of an uniform naturalization law; and while it is acknowledged, that the treaty making power may rightfully bind us to do every thing which is within the constitutional competency of any department of the government, it can never be allowed to go further, for then it would transcend the constitution itself. By what means these free inhabitants were to be made citizens, or at what time, are questions I need not now attempt to answer. There is some difficulty in them, undoubtedly. This difficulty it was—or rather the impossibility of bringing the inhabitants into the union, by any process unknown to the ordinary legislation, that occasioned, in the first place, the qualification of the engagement "as soon as possible," which may be fairly interpreted to mean "as soon as our constitution would permit;" and, in the next place, the stipulation, that until they should become citizens, they should be maintained and protected in the enjoyment of their liberty, property and religion. From the moment they are incorporated, (this is the precise import of the treaty) they are to be upon the same footing with all other citizens of the United States. Till then, they are aliens, but are not to be prejudiced by their alienage.

Did we mean to permit any foreign power to intermeddle with our internal concerns? The sanction of treaties is in the ability of those who make them, to enforce the observance of the stipulations they contain. Were our negotiators so unwise—were the President and Senate so forgetful of their duty, as to make and ratify a treaty by which our own citizens were enabled to appeal from this government to a foreign power, and call in its interference, by war if necessary, to settle their rights? Such a suppo-

sition is entirely inadmissible. This article was probably proposed by our own negotiators—if it was, it was a most unequivocal tribute, from the other high contracting party, of respect for our constitution and laws, for it admits, that no further security was necessary for the protection of their ceded subjects. But, did it mean to give to the free inhabitants of Louisiana any peculiar rights of property, higher or greater than those enjoyed by other citizens, after they should become citizens of the United States? It was beyond the treaty making power to grant or to contract to that extent. Will it be admitted, that it was necessary for the security of the citizen, that to the constitution should be superadded the obligations of a treaty, and that to the principles of our Government must be joined the right of calling in a foreign power? Why, Sir, I have heard it said in this debate, that the treaty not only gives rights to those who inhabited the territory, but also to our own citizens who have migrated thither since the cession. The doctrine thus asserted, appears even more objectionable than that I have alluded to; but it is only worse in appearance, for in both cases it supposes an appeal to a foreign power, from our own citizens, against the government.

What are the "rights, advantages and privileges," of a citizen of the united States, which are guaranteed to the inhabitants of Louisiana? They are the same throughout the United States: They are, therefore, independent of local rights, or those which depend upon residence in a particular place. An inhabitant of a state, has certain privileges arising from his inhabitancy of the state. An inhabitant of a territory, too, has certain privileges, which arise from his living in a territory. A citizen of the United States, who resides neither in a state or territory, but is out of the limits of the union, enjoys neither the privileges of a state or a territory; but he possesses the rights, privileges and immunities of a citizen of the United States, which are common to all the three descriptions of persons. When



an inhabitant of Louisiana is made a citizen of the United States, he becomes entitled to the "rights, advantages and immunities," of a citizen. He carries them with him wherever he goes—if he is in a state, he may add to them state privileges—if he is in a territory, he may enjoy the rights of an inhabitant of a territory—in either, or beyond the limits of both, he is still a citizen of the United States, and upon an equal footing with any other citizen.

It has been argued indeed, that they are to be incorporated into the union, and that this cannot be done without forming them into a state or states. Should we admit this argument to its full extent, it would leave us exactly where it found us, for as they are to be incorporated (by the express terms of the treaty) "according to the principles of the federal constitution," we should still be obliged to return to the constitution, to enquire upon what terms states are to be admitted. And certainly, the plain answer would be, that they are to be admitted upon the same terms as other territories in the United States. But the fallacy of the argument lies, in applying to the territory (which was ceded in full sovereignty) what was intended only for the inhabitants. Nothing more is necessary, to enable us to detect the fallacy, than to trace it to some of its consequences. What right, upon the construction contended for, had we to postpone the admission for a single day? Why, gentlemen will say, the territory had not the requisite number of inhabitants. But, no number of inhabitants is necessary, except by the practice under the constitution, and that same practice gives us certain other powers which need not now be mentioned, including the very one in question. Again, Sir,—according to this hypothesis,—what authority had we to divide this great territory; why not admit it all as one state? They will say, it was too large for a single state. True; but the constitution has not ascertained the size of a state, nor has it even been settled in practice, for we have states of all sizes, from

70,500 square miles, (Virginia) to 1548 square miles, (Rhode Island.) The truth is, and it is vain to attempt to disguise it, that the common understanding of all parties has long ago fixed the interpretation of the treaty upon a footing not now to be disturbed. This territory, like every other territory of the United States, is subject to the power of the Government, to be opened for sale; to be settled, divided and subdivided, and regulated, according to its policy, and finally to be formed into states, and admitted when it may be deemed expedient.

While I am upon this subject of the treaty, I wish to examine it with a different view, and at the same time to show the enormous extent of the doctrine contended for, which will, I think, afford a strong argument in favour of the right of congress to impose the restriction. Whence did the treaty making power derive its authority to purchase lands, and freemen, and slaves? From any express words of the constitution? No. It must then be implied from what? Either from the possession of sovereign authority, to which it is an incident—or, from the broad terms of the grant, which is to make treaties upon the ground that treaties may stipulate for a purchase of territory. It is then a sort of implied power. And what is next implied? That the territory thus acquired is to be upon a different footing from any other territory of the United States: And that congress must form states of it, and must admit them. There, Sir, the implication all at once stops short. No conditions are to be imposed; no terms offered; no stipulations entered into, however salutary or even indispensably necessary for the welfare of the union. No—you are not even to require them to have their legislative and judicial proceedings in intelligible language. The whole policy of the nation is to yield to the views and interests of the inhabitants of the territory, who are, notwithstanding, to become an integral part of the union, and have a full voice in your deliberations. What is your treaty making power then?

Paramount to all the authorities of the nation ; paramount to the constitution itself ; paramount even to the people.

Try this principle by any practical test, and see where it will lead us. The United States have no power (it is contended) to prevent or limit slavery, and they have no power to stop migration. You have purchased a territory, nearly equal in extent to all the original states. A single plantation may inoculate the whole with this odious disease. The 50,000 slaves in Louisiana may blacken the country from the Mississippi to the Pacific. What becomes of the free states then ? For every five slaves, there are three votes, and the time may come, when the voice of the slaves, in the councils of the nation, will be louder than that of the freemen. Heaven forbid ? for if it should, what will be the condition of those who live in the free states ? There is something humiliating in labour—in the labour of getting a living—and it is scarcely to be expected that the master of an hundred slaves should have any feelings in common with him, who earns his bread by his daily work.—What becomes of the compact of the constitution itself, settled, as it was, upon the basis of the existing states, and of the states to be formed out of the North West Territory, whose condition, as respects slavery, was irrevocably fixed ? The sense of that compact is entirely changed. Its form may remain, but the substance—the life of it, is gone for ever. The same principle, too, (for it is indefinite in its capacity) may be applied to future acquisitions. War or negotiation, conquest or treaty, might bring the island of Cuba within the limits of the union. But, I am satisfied, and I hope the committee are satisfied, that the treaty has nothing to do with the question. I discard it altogether.

I will now with the leave of the committee, proceed to the remaining branch of this very interesting subject, or what is called the question of expediency.

It is decreed that slavery shall be a very great evil—and

(as has been already remarked) one of its incidents is, that where it exists, it can never be fairly or freely discussed. It must be taken up at a certain point, which admits every thing that goes before, and among the rest (in a qualified sense) the lawfulness of its origin and existence. I will not disturb this arrangement, but I must be permitted to say that slavery is a great moral and political evil. If it be not, let it take its course—If it be a good, let it be encouraged. If it be an evil, I am opposed to its further extension. This is plain, simple, clear, intelligible ground.

Most of those who have opposed the amendment, have agreed with us in characterizing slavery as an evil and a curse, in language stronger than we should perhaps be at liberty to use. One of them only, the member from Kentucky, who last addressed the committee, (Mr. Clay) rather reproves his friends for this unqualified admission. He says, it is a very great evil indeed to the slave; but it is not an evil to the master—and he challenges us to deny that our fellow citizens of the south are as hospitable, as generous, as patriotic, as public spirited as their brethren of the north or east. Sir, they are all this, and even more. For some of the virtues enumerated, they are eminently and peculiarly distinguished; and I believe they are deficient in none of them. It has long ago been remarked, that the masters of slaves have the keenest relish for their own liberty, and the proudest sense of their own independence. It is natural that it should be so—the feeling is quickened by the degrading contrast continually before them. But it seems to me, that the concession with respect to slavery, modified as it is in appearance, is quite as broad, as the unlimited admission of every one else who has spoken. It is an evil to the slave; it is an evil founded in wrong, and its injustice is not the less because it is advantageous to some one else. Every injury, from the least to the greatest, might find the same sort of mitigation. It is a very great evil to him who suffers, but it is no evil to

him who inflicts it. The same gentleman, however, has himself made the most unqualified concession ; for he said he would recommend to the people of Missouri to abolish slavery, and that in his own state he would favour a general emancipation, as soon as it should be practicable, which he surely would not do if it were not an evil.

I beg leave, further, to say, that I do not consider this as a question of humanity, or a question of policy, or interest, or profit or ease—it is, (disguise or argue it as you will) a question of the *extension of slavery*. It is a question, too, not for the present only, but for future ages ; and the glorious example of our ancestors admonishes us to make the sacrifice, (if sacrifice it be) as we would have the blessings or the curses of posterity. Why should we spread an acknowledged evil ? Is there any other moral or physical evil that we should think it wise or expedient to treat in this way ? Would you extend the ravages of an infectious disease ? Would you cultivate the growth and enlarge the noxious influence of a poisonous weed ? Would any father so treat his offspring, even in this very instance ? If he were surrounded with slaves, whom he believed to be an injury and a curse to him, would he require his son at setting out in life, to relieve him, by taking upon himself a part of the odious burden ?

Besides, it is an evil founded in wrong, and originating in our own choice. The extension of it, therefore, is not to be justified but by the most urgent and instant necessity, so evident, that every man will at once agree to submit to its imperious dictates. I reject all speculative, or probable, or modified, or remote necessity—that which resolves itself at last, when fairly analyzed, into matter of profit, of convenience, or comparative political power. If there be doubt, it is decisive—even though there were considerable weight of probability in favour of the argument, I would decide against it. Has any one seriously considered the scope of this doctrine ? It leads directly to the *establish-*

*ment of slavery throughout the world.* The same reasoning that will justify the extension of slavery into one region, or country, will equally justify its extension to another. It leads, too, directly, *to the re-establishment of the foreign slave trade*, for it has a tendency to break down that great moral feeling which has been gradually making its way into the world, and to which alone, supported and encouraged as it has been by the untiring exertions of humane and benevolent men, *we are indebted for the abolition* of that detestable traffic, so long the disgrace of Christendom. To look upon slavery with indifference; to witness its extension without emotion; to permit oneself even to calculate its advantages—Sir, the next step, and a very short one it is, may be readily imagined. There are parts of this country now, at this very moment, where the laws against the importation of slaves, with all their heavy denunciations, are continually violated. It is notorious, that in spite of the utmost vigilance that can be employed, African negroes are clandestinely brought in and sold as slaves. This could not happen if there were an universal sentiment against the trade; the existence of the illicit traffic, to any extent, however small, affords the fullest proof that in those parts of the union where it continues to be carried on, it meets encouragement from the feelings and the interests of some part of the community. Far be it from me to impute these feelings to any state, or to any considerable part of a state. But the sordid appetite exists, or such inhuman means would not be employed to gratify it.

We are told, however, that it is not *extension*, it is only *diffusion*, that is to be the effect.

I confess that I do not well understand the distinction. The *diffusion of slaves*, is an *extension of the system of slavery* with all its odious features, and if it were true (as it certainly is not) that their numbers would not be increased by it, still, it would be at least impolitic. But, for what purpose, is this diffusion to be encouraged? To disperse

and weaken and dilute the morbid and dangerous matter, says one. To better the condition of the slaves by spreading them over a large surface, says another. A third tells us, that we cannot justly refuse to permit a man to remove with his family. A fourth comes directly to the question of interest, and his reason is, that land in the state of Missouri has been bought by individuals upon the faith of its being a slave state, and if we prohibit slavery there, these lands will fall in value. And in the rear of all these, comes an appeal to the public interest, in the shape of a suggestion, that slavery must be permitted in order to maintain the price of the public lands.

I would ask gentlemen seriously to examine their hearts, and see if they are not deceiving themselves—I am sure they mean not to deceive others. Do they remember the arguments by which the slave trade was so long and so obstinately defended in England? The triumph of humanity there is quite recent, and the contest is a monument of the zeal and ingenuity that may be enlisted in a cause, which we all agree to have been utterly indefensible, and which no man having a respect for himself, would now have the hardihood to attempt to defend. The arguments, then employed, I am sorry to say, have too much resemblance to those which are urged upon this question of expediency. The debates in parliament, the memorials from Bristol and Liverpool, the representations of West India merchants, and ship owners, and owners of West India plantations, were filled with statements of the importance of the traffic to the navigation and trade, and revenue, and colonies, and all the other great interests of the kingdom. Yes, sir, and they undertook to strengthen their argument, by gravely asserting, that the African slave was really rescued from much greater misery, by putting him on board a slave ship, and carrying him in irons (if he happened to survive) to the place destined for his perpetual

imprisonment.—These things are familiar to every body, and they are now treated as they deserve to be.

But it is only diffusion that is desired! Is this a reasonable desire? Little more than thirty years have elapsed since the constitution was adopted. Two states of this union (South Carolina and Georgia) then insisted upon reserving, for twenty years, the privilege of supplying themselves with slaves from abroad, and refused to come into the union unless congress were prohibited, during that time, from preventing importation. Congress were accordingly prohibited, and scarcely ten years have elapsed since the prohibition ceased. Can they reasonably ask already to be permitted to diffuse what they were then so anxious to possess? Are they so soon overburdened? It cannot be, for the illicit trade is still carried on, and that would end at once if there were not a demand and a market.

I may be told, and told with truth, that the other slave-holding states are not exposed to the same remark. Of Virginia, especially, it gives me pleasure to be able to speak on this subject, with sincere respect. While yet a colony, she remonstrated against the introduction of slaves. One of the earliest acts of her government, after her independence, put an end to the trade: And it has always been understood to her honour, that in the convention, her voice and her most strenuous exertions were employed in favour of the immediate abolition of the traffic. Still, Sir, with respect to any, or all the slave-holding states, I may be allowed to ask, *is diffusion now necessary?* I think it is not. Look at the present price of slaves. Does that indicate an actual increase of their numbers to such an amount as to require diffusion? I am informed by a gentleman, upon whose accuracy I place great reliance, that from the adoption of the constitution to the present time, the price has been regularly advancing. I do not mean to say that it is as high now as it was a year ago. It was then, like every thing else, affected by speculation. But taking average



periods, say of five or six years, there has been a regular and constant advance, manifesting a demand at least equal to the supply.

Take another and a larger view. Look at the extent of territory, occupied entirely by freemen, and that which is occupied by freemen and by slaves. You will find, that at time of the last census, in 1810, 444,070, square miles inhabited by 2,333,336 free persons, and 1,138,360 slaves, giving a total of 3,471,696. At the same period, 3,650,101 free persons had for their portion 312,736 square miles. Such was then the comparative extent and population of the free states, and of the slave-holding states and territories, the latter with fewer inhabitants by almost two hundred thousand, possessing above one hundred and thirty thousand square miles of land more than the former, a tract of country equal in size to the two largest states in the union. The population in the free states we know increases with greater rapidity than in the slave-holding states. At the present time it is not to be doubted, that the disparity is greater than it was in 1810 and more unfavourable to the free inhabitants. In making the distribution of future comforts, we ought to have at least an equal eye to the latter, and they, I think from this statement, are most likely soon to want room to diffuse.

If it were not dwelling too long upon this part of the subject, I would ask gentlemen to look also at the comparative statement of the population to the square mile, in the free states, and in the slave-holding states. They will find it in Dr. Seybert's work (page 45.) If I mistake not, the average of the former was 27, 56, and of the latter 15, 36, applying the computation to the states contained in his table. These facts sufficiently answer the question, whether the diffusion of the slave population is now necessary.

I am fully convinced, however, that this idea of *diffusion*, (as distinguished from *extension*,) which is at present so great a favourite, is altogether founded in error. If the

amount of the slave population were fixed, and it could not be increased, it would no doubt be correct to say, that in spreading it over a larger surface, you only diffused it. But this is certainly not the case. We need not recur for proof or illustration to the laws that govern population. Our own experience unhappily shows, that this evil has a great capacity to increase; and its present magnitude is such as to occasion the most serious anxiety. In 1790, there were in the United States 694,280 slaves; in 1800, there were 889,881; and in 1810, 1,165,441. This is a gloomy picture. The arguments of gentlemen on the opposite side admit that an increase will take place, for they are founded upon the belief that the time must arrive, when the slaves will be so multiplied as to become dangerous to their possessors. There are indeed no limits to the increase of population, black or white, slave or free, but those which depend upon the means of subsistence. By enlarging the space, generally speaking, you increase the quantity of food, and of course you increase the numbers of the people. Our own illustrious Franklin, with his usual sagacity, long ago discovered this important truth. "Was the face of the earth," he says, "vacant of other plants it might be gradually sowed and overspread with one kind only, as for instance, with fennel; and were it empty of other inhabitants, it might in a few ages, be replenished with one nation only, as for instance, with Englishmen." If this does not exactly happen, it is only because in their march, they are met and resisted by other plants and by other people, struggling, like themselves for the means of subsistence.

By enlarging the limits for slavery, you are thus preparing the means for its indefinite increase and extension, and the result will be, to keep the present slave-holding states supplied to their wishes with this description of population, and to enable them to throw off the surplus, with all its productive power, on the West, as long as the country

shall be able and willing to receive them. To what extent you will, in this way, increase the slave population, it is impossible to calculate; but that you will increase it there can be no doubt, and it is equally certain that the increase will be at the expense of the free population.

The same gentleman to whom I have several times referred before (Mr. Clay,) insists that this will not be the case. He says, that the ratio of increase of slave population shows, that its activity is now at the maximum; and, as this implies the existence of the most favourable circumstances, you cannot, by any change, accelerate the increase. He therefore infers, that if from twenty slaves in an old state, you take two, and transfer them to a new one, it is an actual diminution in the state from which they are taken to that amount, and putting the two states together, you simply change the place, but not alter the quantity. Supposing the fact to be, as it is here assumed to be, that the activity of increase is now at its maximum, it affords a most conclusive argument against the necessity of diffusion. It proves that there is ample room, and abundant means of subsistence, within the limits that now circumscribe the slave population, and that no enlargement of those limits is necessary. But, Sir, we must look a little into the future. Legislation on this subject, is not merely for the moment we occupy. The whole scope of the argument against us, is founded upon the belief, that the time must come when the slaves will be straitened in the territory, large as it is, which now confines them. When that time shall arrive, I presume it will not be denied, that their numbers will be increased, by enlarging the space for them, and then, certainly, you will have extended slavery, in every sense.

Will it be such a dispersion as the gentleman from Virginia (Mr. Smyth) has talked of? If, like prisoners of war, (one of the cases he has mentioned,) they were to be detained for a limited time, and then set at liberty: Or, if they were to be mixed in society, and gradually lose their

distinctive character in the mixture, dispersion would be highly expedient and just. But, they are negroes and slaves—so they are to continue.—Their descendants are to be negroes and slaves, to the latest generation, and for ever chained to their present condition.—Nature has placed upon them an unalterable physical mark, and you have associated with it an inseparable moral degradation, either of which opposes a barrier not to be passed—to their coalescing with the society that surrounds them. They are, and for ever must remain distinct.

And now, let me ask gentlemen, where this diffusion is to end? If circumstances require it, at present, will not the same circumstances demand it hereafter? Will they not, at some future time, become straitened in their new limits, however large? And what will you do then? Diffuse again—and what then? Even this diffusion will have its limits, and when they are reached, the case is without remedy and without hope. For a present ease to ourselves, we doom our posterity to an interminable curse. But, we seem to forget, altogether, that while the slaves are spreading, the free population is also increasing, and sooner or later, must feel the pressure, which it is supposed may at some time be felt by the slaves. Where you place a slave, he occupies the ground that would maintain a freeman. And who, in this code of speculative humanity, making provision for times afar off, is to have the preference, the freeman or the slave?

In this long view, of remote and distant consequences, the gentleman from Kentucky (Mr. Clay,) thinks he sees how slavery, when thus spread, is at last to find its end. It is to be brought about by the combined operation of the laws which regulate the price of labour and the laws which govern population. When the country shall be filled with inhabitants, and the price of labour shall have reached a minimum (a comparative minimum I suppose is meant) free labour will be found cheaper than slave labour.

Slaves will then be without employment, and, of course, without the means of comfortable subsistence, which will reduce their numbers, and finally extirpate them. This is the argument, as I understand it—When the period referred to will arrive, no one can pretend to conjecture. Much less, would any one attempt to say, what number of slaves we shall have (with the previous encouragement proposed to be given to them) when this severe law shall begin to operate. But every prudent and feeling man will, I think, agree, without hesitation, that he would rather see the experiment tried upon a small scale than a large one—that it would be much more easily and safely conducted, and with much less suffering, in the present slave-holding states, than if it were to embrace in addition the whole of the great territory beyond the Mississippi. But, let me ask that gentleman, what he supposes will happen in the mean time? The diminished price of labour, and the reduced means of subsistence, are, according to this theory, first to operate upon the freemen, and then upon the slaves, and upon both by producing a considerable degree of misery. Does he suppose that they will patiently submit, and wait till the slow destruction arrives? The two great classes, kept distinct by your laws, would in such a struggle, like two men upon a single plank in the ocean, make a desperate effort each to secure to itself existence, by destroying the life of the other. When want and misery begin to press upon them, instinct will teach them how to seek relief, and deadly violence will be its agent. And what would then be the situation of the country? I shudder even to think of it. The present slave-holding states have a security in being surrounded by states that are free. But if the whole nation, or even a considerable part of it, were in the same condition, what security should we then have?

Again, sir, we are told, that the amendment in question will injure the rights of property, by depriving the owners of slaves of their unborn descendants, and by lessening the

value of their lands, bought upon the presumption that Missouri would be a slave state. Sir, we have no right to meddle with the question of slavery in the existing states. Their own laws must regulate the subject, and they may modify it as to them shall seem best. But, as a general position, independently of state provisions, it may safely be averred, that no man has a property in an unborn human being. We need not go far for the proof of this. The states that have abolished slavery, have done so by declaring that the children to be born should be free, which would have been beyond their power, if there had been a property in the children before their birth. This principle, however, is so well established, that it need not be further insisted upon. The depreciation in the value of land, is a consequence not likely to happen. The reverse will be the case. Let any one compare the prices and the improvement of land in the free states, and in the slave-holding states, and he will be satisfied, that in this, as in every other respect, Missouri will be a great gainer by the restriction. But, if it were otherwise, is the great policy of the nation in a point so vital—are the essential interests of justice and humanity, to yield to the pecuniary interests of a few individuals? Can you always avoid doing a partial injury by your public measures? When war is declared, what is the effect upon the merchant? When peace is made, how does it fare with the manufacturer? You cannot even alter the rate of a duty, without affecting some interest of the community, either to its prejudice or benefit, and at last you must come to the consideration of the great question of national concern, to which minor considerations must give way.

In the variety of claims, that have been pressed upon us, there is but a single one which deserves a moment's attention. It is that which arises out of the enquiry, so often repeated, will you not suffer a man to migrate with his family?—Those who have been accustomed to the labour and service of slaves, it is not to be denied, cannot at once

change their habits, without feeling, at least, a great deal of inconvenience. It is also true, that the associations which have been formed in families, cannot be broken up without violence and injury to both the parties; and in proportion as the authority has been mild in its exercise, will the transfer of it to other hands be disadvantageous, especially to the servant. But, it is impossible to make a discrimination, or to permit the introduction of slaves at all, without giving up the whole matter. If you allow slavery to exist, you must allow it without limits. The consequence is, that the state becomes a slave state. Free labour and slave labour cannot be employed together. Those who go there, must become slave holders, and your whole system is overturned—Besides, if the limited permission did not, of itself, produce the evil, to an unlimited extent, (as it certainly would) it is liable to abuses, beyond all possibility of control, which would inevitably have that effect. The numbers of a family are not defined—the number of families of this sort, which a single individual may have, cannot be fixed. It is easy to see how under colour of such permission, a regular trade might be established, and carried on as long as there was any temptation of profit or interest.—This argument, however, has been pressed, as if a prohibition to go with slaves, was in effect a prohibition to the inhabitants of a slave-holding state to go at all. I cannot believe this to be the case. They may go without slaves; for though slaves are a convenience and a luxury to those who are accustomed to them, yet the inhabitants of the slave-holding states would hardly admit that they are indispensably necessary. Besides, they may take their slaves with them as free servants. But look at the converse.—The introduction of slavery, banishes free labour, or places it under such discouragement and opprobrium as are equivalent in effect. You shut the country, then, against the free emigrant, who carries with him nothing but his industry. There are large and valuable classes of people, who

are opposed to slavery, and cannot live where it is permitted. These too you exclude. The laws and the policy of a slave state, will and must be adapted to the condition of slavery, and, without going into any particulars, it will be allowed, that they are in the highest degree offensive to those who are opposed to slavery. It seems to me, sir,—I may be pardoned for so far expressing an opinion upon the concerns of the slave-holding states—it seems to me, that the people of the south have a common interest with us in this question, not for themselves, perhaps, but for those who are equally dear to them. The cultivation by slaves requires large estates. They cannot be parcelled out and divided. In the course of time, and before very long, it will happen that the younger children of southern families must look elsewhere to find employment for their talents, and scope for their exertion. What better provision can they have, than free states, where they may fairly enter into competition with freemen, and every one find the level which his proper abilities entitle him to expect? The hint is sufficient, I venture to throw it out for the consideration of those whom it concerns.

But, independently of the objections to the extension, arising from the views thus presented by the opponents of the amendment, and independently of many much more deeply founded objections, which I forbear now to press, there are enough, of a very obvious kind, to settle the question conclusively. With the indulgence of the committee, I will touch upon some of them.

It will be remembered, that this is the first step beyond the Mississippi—the State of Louisiana is no exception, for there slavery existed to an extent which left no alternative—It is the *last step*, too, for this is the last stand that can be made. Compromise is forbidden by the principles contended for on both sides. Any compromise that would give slavery to Missouri is out of the question. It is, therefore, the final, irretrievable step, which can never be re-



called, and must lead to an immeasurable spread of slavery over the country beyond the Mississippi. If any one faulter; if he be tempted by insinuations, or terrified by the apprehension of losing something desirable—if he find himself drawn aside by views to the little interests that are immediately about him—let him reflect upon the magnitude of the question, and he will be elevated above all such considerations. The eyes of the country are upon him; the interests of posterity are committed to his care—let him beware how he barter, not his own, but his children's birth-right, for a mess of pottage—The consciousness that we have done our duty, is a sure and never failing dependence. It will stand by us and support us through life, under every vicissitude of fortune, and in every change of circumstances. It sheds a steady and a cheering light, upon the future as well as the present, and is at once a grateful and a lasting reward.

Again, Sir, by increasing the market for slaves, you postpone and destroy the hope of extinguishing slavery by emancipation. It seems to me, that the reduction in value of slaves, however accomplished, is the only inducement that will ever effect an abolition of slavery. The multiplication of free states, will at the same time give room for emancipation, or, to speak more accurately, for those who are emancipated. This, I would respectfully suggest, is the only effectual plan of colonization—but it can never take effect while it is the interest of owners to pursue their slaves with so much avidity, or to pay such prices for them. Increase the market, and you keep up the value—increase the number of slave-holding states, and you destroy the possibility of emancipation, even if every part of the union should desire it. You extend, indefinitely, the formidable difficulties which already exist.

Nor does the mischief stop here. All liberal minds and all parts of the union, have with one voice agreed in the necessity of abolishing that detestable traffic in human

flesh, the slave trade—the *foreign slave trade* : But, reject the amendment on your table, admit Missouri without restriction, and you will inevitably introduce and establish a *great inland domestic slave trade*, not, it is true, with all the horrors of the middle passage, nor the cold blooded calculation upon the waste of human life in the seasoning, but still with many of the odious features, and some of the most cruel accompaniments of that hateful traffic. From Washington to St. Louis, may be a distance of one thousand miles. Through this great space, and even a much greater, you must witness the transportation of slaves, with the usual appendages of hand-cuffs and chains. The ties of domestic life will be violently rent assunder, and those whom nature has bound together, suffer all the pangs of an unnatural and cruel separation. Unfeeling force, stimulated by unfeeling avarice, will tear the parent from the child, and the child from the parent—the husband from the wife, and the wife from the husband. We have lately witnessed something of this sort, during the period of high prices. Gentlemen of the south, particularly those from Virginia, who speak of their slaves as a part of their family, would start at this—They would reject, with scorn and indignation, even a suggestion, that they were to furnish a market for the supply of slaves to the other states. I can well believe, that in families where the relation has long subsisted, there are feelings that would revolt at such a thought—feelings that have considerably modified this severe condition, and grown out of the associations it has, in a long course of time, produced. But, can any one tell, what cupidity may win or necessity extort? No man is superior to the assaults of fortune; and, if he were, the stroke of death will surely come, and break down his paternal government, and, then, the slave dealer, whom he would have kicked from his inclosure, like a poisonous reptile, presents himself—to whom?—He cannot tell. Thoughts like these, have often, I doubt not, produced the liberation

of slaves. If gentlemen question *our* sincerity, let them consider at what period of life it is, that emancipation most frequently takes place. It is at that serious moment, when men sit down to settle their worldly concerns, and, as it were, to take their leave of the world. Then it is, by the last will, to take effect when their own control is ended, that owners restore their slaves to freedom, and, by what they certainly consider an act of justice, surrender them to themselves, rather than leave them to the disposal of they know not whom. Let gentlemen from the south reflect on this. The public sentiment, upon the subject of slavery, is every where improved, and still improving. It has already destroyed that monstrous inhumanity called the slave trade. I fear that such a measure, as is now proposed by the opponents of the restriction, would not merely check and retard its progress. I seriously fear that it may gradually work an entire change. The effects are not to be contemplated without the deepest anxiety.

The political aspect of the subject is not less alarming. The existence of this condition among us, continually endangers the peace and well being of the union, by the irritation and animosity it creates between neighbouring states. It weakens the nation while it is entire: And if ever a division should happen, can any one reflect without horror, upon the consequences that may be worked out of an extensively prevailing system of slavery? We are told, indeed, both in the house and out of it, to leave the matter to Providence. Those who tell us so, are nevertheless active and eager in the smallest of their own concerns, omitting nothing to secure success. Sir, we are endowed with faculties, that enable us to judge and to choose—to look before and after, however imperfectly. When these have been fairly and conscientiously exerted, we may then humbly submit the consequences, with a hope and belief, that, whatever they may be, they will not be imputed to us. The issue of our counsels, however well meant, is not in our hands. But, if for our own gratification, regardless

of all considerations of right or wrong, of good or evil, we hug a vicious indulgence to our bosom, until we find it turning to a venomous serpent, and threatening to sting us to the heart, with what rational or consoling expectation can we call upon Providence to tear it away and save us from destruction.

It is time to come to a conclusion. I fear I have already trespassed too long. In the effort I have made to submit to the committee my views of this question, it has been impossible to escape entirely the influence of the sensation that pervades this house. Yet, I have no such apprehensions as have been expressed. The question is indeed an important one; but its importance is derived altogether from its connection with the extension, indefinitely, of negro slavery, over a land which I trust Providence has destined for the labour and the support of freemen. I have no fear that this question, much as it has agitated the country, is to produce any fatal division, or even to generate a new organization of parties. It is not a question upon which we ought to indulge unreasonable apprehensions, or yield to the counsels of fear. It concerns ages to come, and millions to be born. It is, as it were, a question of a new political creation, and it is for us, under Heaven, to say, what shall be its condition. If we impose the restriction, it will, I hope, be finally imposed. But, if hereafter it should be found right to remove it, and the state consent, we can remove it. Admit the state, without the restriction, the power is gone forever, and with it are forever gone all the efforts that have been made by the non slave holding states, to repress and limit the sphere of slavery, and enlarge and extend the blessings of freedom. With it, perhaps, is gone forever, the power of preventing the traffic in slaves, that inhuman and detestable traffic, so long a disgrace to christendom. In future, and no very distant times, convenience and profit, and necessity, may be found as available pleas as they formerly were, and for the luxury of slaves, we shall again involve ourselves in the sin of the trade. We

must not presume too much upon the strength of our resolutions. Let every man who has been accustomed to the indulgence, ask himself if it is not a luxury—a tempting luxury, which solicits him strongly and at every moment. The prompt obedience, the ready attention, the submissive and humble, but eager effort to anticipate command—how flattering to our pride, how soothing to our indolence ! To the members from the south, I appeal to know whether they will suffer any temporary inconvenience, or any speculative advantage to expose us to the danger. To those of the north, no appeal can be necessary. To both, I can most sincerely say, that as I know my own views on this subject to be free from any unworthy motive, so will I believe, that they likewise have no object but the common good of our common country, and that nothing would have given me more heartfelt satisfaction, than that the present proposition should have originated in the same quarter to which we are said to be indebted for the ordinance of 1787. Then, indeed, would Virginia have appeared in even more than her wonted splendor, and spreading out the scroll of her services, would have beheld none of them with greater pleasure, than that series which began, by pleading the cause of humanity in remonstrances against the slave trade, while she was yet a colony, and, embracing her own act of abolition, and the ordinance of 1787, terminated in the restriction on Missouri. Consider, what a foundation our predecessors have laid ! And behold, with the blessing of Providence, how the work has prospered ! What is there, in ancient or in modern times, that can be compared with the growth and prosperity of the states formed out of the North West Territory ? When Europeans reproach us with our negro slavery ; when they contrast our republican boast and pretensions with the existence of this condition among us, we have our answer ready—it is to you we owe this evil—you planted it here, and it has taken such root in the soil, we have not the power to eradicate it. Then, turning to the west, and directing their attention to

Ohio, Indiana and Illinois, we can proudly tell them, these are the offspring of our policy and our laws, these are the free productions of the constitution of the United States. But, if beyond this smiling region, they should descry another dark spot upon the face of the new creation—another scene of negro slavery, established by ourselves, and spreading continually towards the further ocean, what shall we say then? No, sir, let us follow up the work our ancestors have begun. Let us give to the world a new pledge of our sincerity. Let the standard of freedom be planted in Missouri, by the hands of the constitution, and let its banner wave over the heads of none but freemen—men retaining the image impressed upon them by their Creator, and dependant upon none but God and the laws. Then, as our republican states extend, republican principles will go hand in hand with republican practice—the love of liberty with the sense of justice. Then, sir, the dawn, beaming from the constitution, which now illuminates Ohio, Indiana and Illinois, will spread with increasing brightness to the further west, till in its brilliant lustre, the dark spot which now rests upon our country, shall be forever hid from sight. Industry, arts, commerce, knowledge, will flourish with plenty and contentment for ages to come, and the loud chorus of universal freedom, re-echo from the Pacific to the Atlantic, the great truths of the Declaration of Independence. Then too, our brethren of the south, if they sincerely wish it, may scatter their emancipated slaves through this boundless region, and our country, at length, be happily freed forever from the foul stain and curse of slavery. And if (may it be far, very far distant!) intestine commotion—civil dissention—division, should happen—we shall not leave our posterity exposed to the combined horrors of a civil and a servile war. If any man still hesitate, influenced by some temporary motive of convenience, or ease, or profit, I charge him to think what our fathers have suffered for us, and then to ask his heart, if he can be faithless to the obligation he owes to posterity?

## SPEECH,

DELIVERED IN THE HOUSE OF REPRESENTATIVES, MARCH 7TH, 1822, ON THE BILL TO ESTABLISH AN UNIFORM SYSTEM OF BANKRUPTCY THROUGHOUT THE UNITED STATES.

MR. CHAIRMAN,

It is my duty now to endeavour to reply to the principal objections which have been made to the passage of this bill.\* After so much discussion, and at this late stage of the debate, I would gladly dispense with its performance and relieve the House from further trespass upon its patience. But, this would not be just to the very interesting subject before us, nor to those who have so anxiously besought our attention to it ; and I must therefore ask the indulgence of the house, while, as rapidly as may be in my power, I bring into their view, the answers—satisfactory ones I hope they will be found—to the arguments of those who are opposed to the bill.

I can say with truth, what probably can scarcely be said by any other member of the house—that I have listened, attentively, to every speech that has been made on either side of the question, with only one exception, and that was owing to circumstances over which I had no control, and which I very much regret. I have listened with pleasure, and with instruction, too, and with an increased conviction of the expediency, necessity, and justice of the measure proposed. If doubt had remained in my mind, it would

\* Mr. Sergeant was chairman of the committee on the Judiciary who reported the bill.

have been entirely dispelled by the debate: For, the more deeply and thoroughly the subject is examined, the more obvious does its importance become, and the more plain and imperious our duty towards all classes of our fellow citizens, but especially towards those who are immediately interested in the decision. Indeed, I am fully persuaded, that nothing is wanting but a close and candid examination of the true nature and merits of the case, with a moderate sense of what liberal justice, and the true interests of society demand, to remove the prejudices, and effectually silence the objections, which have heretofore prevented the passage of a bankrupt law.

In the remarks I am about to offer, it will be necessary, occasionally, to touch upon ground already occupied by members, who have preceded me in the debate. I will do it as little as possible, and when I am obliged to repeat what has been already advanced, it will not be from want of respect for those who have gone before me, nor from any hope of being able to present the same topics with equal strength and force, but only for the sake of their necessary connexion with other views.

The first class of objections to be noticed, for which we are indebted chiefly to the gentleman from Virginia, (Mr. A. Smyth,) are not to the principle of a bankrupt law, but to the details of this particular bill. I must submit to the judgment of the house, how far such a course of observation, was correct, or just, or likely to conduce to a fair investigation, at this stage of the proceedings, and upon the present motion, which was made for the avowed purpose of trying the sense of the house, upon the broad question, whether we would or would not pass a bankrupt law, under any modifications whatever; in other words, whether it was fit and proper at all to exercise the power given by the constitution. The particular provisions of the bill, are not open to amendment, upon such a motion; they are not within the legitimate range of its inquiry; and such objec-



tions are really calculated only to embarrass and prolong the discussion, by producing impressions, which, if they are suffered to remain, might seriously affect the minds of those who have not carefully examined the bill, while the attempt to answer them now, imposes upon the friends of the measure, a burthen they ought not to be required to bear, and upon the house, a tax the more severe, as it is not, and cannot be productive of any profitable result. If the details of the bill are defective, let their defects be pointed out, at the proper time, and let us then endeavour to amend them.

Instead however, of following the course which is usual upon such occasions, an attempt has been made to bring odium upon the bill, by a strong exhibition of the supposed deformity of its parts. The member from Virginia, (Mr. A. Smyth) has indeed characterized it as a monster, which, if it were as bad as he described it to be, it would be justifiable to strangle at its birth: which ought not to be suffered to have a chance to breathe the breath of life. He said, "that it was calculated to sacrifice the liberties of the people, to destroy personal security, and the security of property, to abolish the mild and equitable systems of jurisprudence, which the wisdom and policy of the states have ordained," in short, that it would be productive of every sort of mischief, and nothing but mischief. That gentleman has, indeed, been extremely, I had almost said excessively liberal, in acquitting me of any share in this atrocious attempt upon the liberty and laws of our country, by supposing that not a line of the bill has proceeded from my pen. While I thank him for his kind intentions, it is impossible for me to avail myself of the concession. For if it were literally founded in fact, and I cannot say that it is, yet, having adopted and advocated the bill, not once, but repeatedly; not hastily, but upon full reflection, and feeling as I now do, that if my most anxious wishes and exertions for its passage, could ensure its success, it would

unquestionably succeed, I cannot, and ought not, and do not desire, to be deemed less accountable, than the original framers of the bill whoever they may have been. As to those who have now, and upon former occasions, supported it in this house, and in the other, I am willing to stand in the same line with them; they are men, with whose names I deem it an honour to have mine associated.

A member from South Carolina, (Mr. Mitchell,) has urged it as an argument against the bill, that it has been floating, as he expressed it, for three or four years, between the two houses, which he seemed to think could not have happened, if it had really deserved their consideration. He was mistaken—it has been much longer soliciting the attention of congress. A bill, substantially the same, was reported at least as long ago as the year 1813. From that time to the present, the subject has been frequently brought into view. In 1817, it underwent considerable discussion. It has since received some amendments, and at the last session it passed the senate, exactly in the form in which it is now before this house. To what, then, was this great delay attributable? How did it happen that the call upon congress, to exercise a power expressly given to them by the constitution for the benefit of our fellow citizens, so frequently and importunately made, and under circumstances, as strong as could possibly have been contemplated by the framers of that instrument, has hitherto been made in vain? The answer is obvious. It is because, those who more particularly stand in need of the law, and petition for its enactment, and those for whose relief it is designed, are not represented here; their wants and their wishes are not felt, and, unfortunately, cannot be made intelligible. Who are the petitioners? They are, generally, merchants. When we hear that class of our fellow citizens, spoken of as they have been in this debate; when we are told as we have been, by one member, (Mr. Mitchell) that the merchant is a man, without a country, and without a home;

who has no settled interest or stake in society ; who, to use his very language, is, " of every country and of no country, indifferent whether the sun rises on him to the north, or to the south of the equator," can we be at a loss to account for the difficulty and delay, which this measure has encountered ? Can we be surprised, that where such unreasonable, and I must say, unjust prejudices are found, against a most respectable and honourable class of the community, a deaf ear should be turned to their complaints, and they should be dismissed, with cold indifference, or contemptuous neglect ? I am now addressing, on their behalf, a body composed almost entirely of professional men and planters, who do not want the aid of a bankrupt law for themselves, and who, I can sincerely say, I hope may never stand in need of its relief ; may never know from experience, the wasting heart-sickness and despair of the unfortunate man, who can obtain no relief. Thus circumstanced—placed beyond the reach of this kind of misfortune themselves, and seldom, perhaps never, witnessing it others, they do not realize the force and extent of the evils which this bill is intended to remedy. The subject does not come home to their business and bosoms, but is a mere matter of cold speculation. When the friends of the bill, endeavour to press it upon their hearts, and their minds, by plain and unexaggerated statements, we are supposed to employ the pencil of fiction, only because they have not themselves seen the originals. If gentlemen, who are not conversant with the operation of the existing laws, will not give us credit for the facts we state ; if they will not believe the statements of those who have seen the evils and sufferings, which this bill is intended to remove, it would be vain, that the picture, faithful as it is, should be presented anew, or that other scenes of evil and of misery, should be portrayed. But I beg them to be assured, that this class of ruined merchants, is not what it has been supposed to be, by some who have spoken on this question. Among them

are to be found the most high minded and honourable men ; men who have been eminently useful, men who have been employed, and beneficially employed in the councils of the nation, and who are now withering under the blast of unmerited misfortune !

Nor do gentlemen give due attention to the distinction, a most important and plain distinction, so well enforced by my colleague, (Mr. Hemphill) between the occupation of a merchant or trader, and that of almost any other class in the community. The capital of the professional man, is in his talents and acquirements, which cannot be taken from him. The planter's is in the soil, and remains, under every vicissitude, if he be reasonably prudent, firm as the foundations of the earth. The laws secure to him its enjoyment. He may lose a crop, the profits of a year, at most ; the capital is sure, immoveable, and imperishable. Neither of them has any just occasion to deal in credit, to become creditors or debtors to any considerable amount—to involve himself in the fate of others, or to become liable for debts, beyond his means to pay. Such embarrassment is, as to them, in general, the evidence of imprudence at least, if not of something worse. How different is the necessary, I may say inevitable condition of the man engaged in trade ? His whole capital is continually at risk, exposed to the danger of the winds and the waves, dependent upon the good fortune, and prudence of others, with whom he is connected ; placed by the very nature of its employment, beyond his control, and liable to be swept away, at every moment, without his fault, and to his utter ruin. Political changes, too, which press lightly in comparison, upon other members of the community, may be and frequently are, to him, overwhelming. The transition from peace to war, and even the return from war to peace, which comes dressed in smiles to every one else, may prove to the merchant, a most destructive calamity. Non-intercourse, embargo, every sort of restriction or political

change, may fall with irresistible weight upon him. Measures of finance, too, a rapid change in the circulation (and no nation, probably, ever experienced so sudden and great a reduction, as we have passed through) by their effect upon prices and upon the value of money, enter with uncontrollable fury, into the affairs of the merchant, disconcerting every thing, overturning all his schemes, and changing the whole face of his concerns. The first shock to his credit is fatal; for it is also true, that this man, who has so much to meet and to endure, rests all his hopes and prospects, upon so delicate a foundation as the daily ability, continually manifested, to comply with his engagements to the letter. Touch that, and he is irretrievably gone. He has nothing with which to begin again, but the uncertain forbearance of his creditors.

Here is a broad ground, laid open to the examination of every one. Unless our opponents are prepared to say, that there shall be no such thing as commerce, no merchants, no credit, no system of severe and rigid punctuality, to regulate the movement of the machine of trade, they must admit with the gentleman from South Carolina, (Mr. Lowndes,) that these circumstances afford a motive for peculiar legislation, such as I must again insist, every civilized and commercial nation, has thought fit to adopt. Supposing, then, that notwithstanding the authority of the constitution in favour of such a measure, we are still bound, as our opponents have insisted, to maintain and prove its necessity, what more can be required than the general views that have been presented? To carry them into detail; to insist upon the actual state of things, to describe the evils that continually arise from the want of such provisions, must be wholly unavailing, unless they will give us credit for our facts, and if they do that, enough has already been stated. As long as they adhere to the opinion, that it is all the creation of fancy, any effort to reason from what is stated, must terminate in an useless waste of time.

It is with great reluctance that I shall enter, at this stage of the discussion, into a vindication of the details of the bill. But it seems to be indispensably necessary to relieve them, by a proper explanation, from the charges that have been made. Otherwise, if the bill should fail, it might be supposed to be owing to carelessness, negligence, or ignorance in its construction ; and its friends would have the extreme mortification of losing the great object they have in view, from their own fault. I should be exceedingly distressed, if the failure could be justly attributed to any such cause. I am sure it could not, for I have heard no objections made, by those who are in favour of a bankrupt law in any shape in which it can be framed. Those who offered them, have exercised their ingenuity, not to make it better, but to make it worse ; or, which is the same thing, to give it the worst appearance possible, and to bring discredit and odium upon it by every thing that is calculated to appeal to pride, to passion, to interest, and to prejudice.

It is not necessary again to appeal to the house, whether this is a fair course of proceeding, or ought to receive their countenance. But to test the sincerity of those who have made objections, we invite them to take the bill into their own hands—to bring forward their amendments, to show, candidly and distinctly, in what particulars it may be beneficially altered ; give us, if they will, an entirely new system, provided, the two great points of security to the creditor, and relief to the debtor, are preserved. I have no feeling of concern for any thing else, and I think I can answer for all who have supported the bill, that they will be ready to concur in any proper amendment—that they will unequivocally evince their attachment, whoever may claim the parentage. They will only ask to spare its life—let them know that the object of their solicitude may live, and they will readily yield the contest about its custody. If gentlemen who have made objections will not do

so, we shall be constrained to believe, that it is because they have not the disposition to do justice to the measure, and to our fellow citizens who have asked for it.

At the proper time, I shall myself venture to propose two amendments, and there is one, it is understood, will be proposed, to which I shall certainly not object. I mean to bring forward a provision to enable a man in failing circumstances, to apply for a commission of bankruptcy, retaining, however, the compulsory power, in cases where no such application is made. The design of the provision would be, to enable the debtor to attain by direct and permitted means, what he would otherwise be obliged to accomplish by the irregular machinery of a concerted commission. The end would be the same, but a concerted bankruptcy is liable to the objection, that it is founded on an unlawful fiction. Another provision proposed, will be for the purpose of obtaining authentic evidence of the practical operation of the law, by requiring the commissioners to make frequent returns, at stated times, of the cases which shall occur. The amendment alluded to, as likely to come from another quarter, is to enlarge the description of persons who may be voluntary bankrupts, or, in other words, who may have the benefit of the law. If the gentleman from South Carolina, (Mr. Lowndes,) who has strongly stated and maintained the necessity and policy of a bankrupt law, will concur with the friends of the bill, in the effort to amend it, many, if not most of his objections, may certainly be removed. To wait until we can conciliate the opinion of every member of the house, upon every part of a bill like this—until we shall all agree, not only upon the principle, but upon every subordinate enactment—is to postpone it indefinitely—it is to mock the hopes of those who are anxiously looking for the measure, by keeping it forever before their eyes, but never placing it within their reach. Something must be yielded upon minor points of no great importance.

Let us remember how long such a bill has been before us. For nearly ten years, I believe, it has in some way or other, been on our tables. Five years ago, it was discussed in this house. Last session it passed the senate, and came to us, too late, it was then said, to receive a deliberate examination. Sometimes it is too early; sometimes too late; sometimes it is too much discussed, and the house from mere weariness suffer it to drop from their hands by an indirect decision; then again, there is not time enough for discussion, and it is put by for a future occasion. And at last, when it is seasonably brought forward and we have been weeks engaged upon it, with pressing memorials, urging and beseeching us for the passage of the law, we find out that this is not exactly the law that it ought to be. And what then? The natural answer would seem to be, to make it what it ought to be, to expunge what is wrong, and endeavour to insert what you think right. Shall we ever be better prepared than we now are?—But no; we are to wait for some undefined time, until, by some undefinable means, a perfect work shall be presented to our acceptance, so perfect, indeed, as to admit of neither objection nor improvement. I can only say, that if it correspond with this description, it will not come from human hands, and it must not be subjected to human criticism, or it can never be free from a mixture of evil; and if it were, the presumptuous wisdom of man would not suffer it to escape the imputation of defect.

If we are satisfied that the measure is necessary, let us make the best bill we can, and be satisfied with the sincerity and the reality of our exertions. Experience is a great teacher, and will point out to us defects, and their remedies, with far greater certainty than speculative and conjectural reasoning. Let us begin, and afterwards improve, if necessary; but let us begin.

I am obliged, however, to say, that justice has not been done to this bill, and I feel myself bound to endeavour to



vindicate it from the heavy charges that have been brought against it, especially by the gentleman from Virginia, (Mr. A. Smyth.) I am well aware, that the reply to his criticisms, some of them very minute, will be tedious and uninteresting. But the house will bear in mind, that long as the bill has been before them, and long as it has been under discussion, there are probably very few of the members who have examined it throughout, and collated its different provisions. This is one of the most serious difficulties its advocates have to encounter. From its necessary length; from the indifference felt about it by many, and from other causes, it is impossible to obtain for it a close and careful attention. We are much indebted to any one who will be at the pains taken by the gentleman from North Carolina, (Mr. Sawyer,) to examine and unfold its different parts.

From similar causes, operating even more powerfully, the public is likely to know little of the details, as the remonstrance from New York, which the gentleman from New York, (Mr. Colden,) has shewn to be founded in error and misconception—most fully proves. Under these circumstances, objections, though destitute of real foundation, or exaggerated greatly beyond their natural bearing, are apt to make a strong impression, especially when they come from a gentleman of as much research as the member from Virginia, (Mr. A. Smyth,) who seldom offers himself to the house without due preparation, and delivers his opinions with a deliberate gravity that cannot fail to have effect, when he speaks upon a subject with which his professional pursuits are supposed to have made him acquainted. What then will he say, if I venture now to tell him, that there is scarcely one of the specific objections, upon which he has rested his general denunciation of the bill, which is supported in point of fact? The cause of some of his errors is obvious. He has been studying the bankrupt law of England, instead of the bill upon the table, and has been insist-

ing upon objectional provisions in the former, without sufficiently examining how far they are corrected by the latter. Thus (to follow his own order,) he objected, that the description of a trader, who might be a bankrupt, was too broad, and would comprehend every person who should buy and sell, in however small a quantity, though buying and selling was not his occupation; and he dwelt upon the whimsical distinctions produced by this ambiguous description. A bleacher, he said,—and I thank him for selecting that illustration,—cannot be a bankrupt, because he only bestows his labour; a dyer may, because he buys the dying drugs. That is the law of England, but it is not this bill, as he has himself, I believe, in very general terms, admitted. Why then introduce it at all? Those who did not carefully listen, and carefully examine, too, might be led into the error of supposing, that the same objectionable ambiguity remained in the bill, and that it was so inartificially constructed as to copy servilely even acknowledged defects in the law of England. Whereas, in truth, all these things are carefully, and scrupulously, and I believe, adequately guarded against by the proviso at the end of the section.\* I beg the particular attention of the member from Virginia to that proviso, and call upon him, if he thinks there is any further amendment necessary, to aid us in making it; if not, to abandon this objection as untenable.

He has fallen into another error of the same sort. He seems, indeed, to have studied very diligently, the English bankrupt law, but not to have paid sufficient attention to this bill. If, said he, a servant, by the orders of his master, deny his master to a creditor, the master may be made a bankrupt, and is irretrievably ruined, even though he

\* "If their living is substantially gotten by mechanical labour, though with some mixture of buying and selling, they shall not as such only be deemed or taken to be within the provisions of this bill."

were solvent and able to pay all his debts. This is not so. Denial by this bill, is not an act of bankruptcy, nor the evidence of it. By the law of England, "keeping house," or "beginning to keep house," is the act of bankruptcy, and denial is the evidence. But by this bill, "keeping house" is not an act of bankruptcy; it is "keeping house *so that he cannot be taken or served with process.*" The act of bankruptcy, therefore, is not committed, until the debtor is reduced to the extremity of having process actually issued against him, and defeats its execution by keeping within the legal defence of his house. As to this, however, and the other acts alluded to, which involve grave considerations, of too much importance to be now discussed, if any one thinks them not sufficiently guarded, let him candidly bring forward a clause more explicit—I mean at the proper time. Then, too, I will point out to the same gentleman from Virginia, a matter of fact answer to another of his arguments, which, in his own words, was stated thus: "When one is declared a bankrupt, the declaration has relation back to the time of committing the act of bankruptcy, so as to avoid his subsequent acts." It assuredly is not so. The commission has no relation at all, against *bona fide* acts of the bankrupt, done in the course of his business, without notice on the part of the person who deals with him, as he may see most carefully provided in the eleventh section. Such transactions will not be affected. And as to other acts of the bankrupt, I perceive again, he has been misled by the law of England, for in this bill, the relation is expressly limited to six months before the commission issued. If he had done this bill the justice to bestow upon it a little more of the time which he has employed in studying the law of England, he would have thought better of its provisions. They are of a nature to improve upon acquaintance.

Besides objecting to what the bill does, the same gentleman has objected to what it omits to do, and under this

head has remarked, that it does not provide for issuing commissions of bankruptcy against corporations; a very important suggestion, indeed, well deserving consideration, but relating to a subject so peculiar, and so distinct from what this bill contemplates, that it would require an entirely different set of provisions. We have enough to deal with at present, and when the matter in hand is disposed of, if any one will propose a law for corporations, (which it is competent to Congress to enact,) he will, it is to be hoped, be met with a liberal spirit, and a disposition to give him every possible aid. But it here occurs to me, that the same gentleman made a remark, which puts us at issue upon a matter of fact, and I feel a little tenacious, because it may be regarded as a fact of some consequence, and as such it was formerly presented to the notice of the house; it is with respect to the nature of the law of Holland. He says, before the Code Napoleon was introduced into Holland, they had no bankrupt law, but only the *cessio bonorum*, which merely discharged the person. The inference is, that in the times of their greatest commercial prosperity, they had no bankrupt law. He has quoted for this a passage in Cooper's Bankrupt Law, who cites the opinion of Lord Chancellor Hardwicke, expressed in a case decided in 1744. The case is reported in Atkyns, where the Lord Chancellor is only made to say, that he did not take it to be the law of Holland, that the effects were discharged as well as the person. There was another point in the case, which was sufficient for its decision, and this, which is now in question, was not of much importance, and therefore, probably, not very carefully inquired into. But if the member from Virginia had extended his view only a little further, in the same book from which he quoted (Cooper's Bankrupt Law,) in the same page, in the following paragraph, and the sentence immediately following the one he read, he would have found Lord Mansfield stating just the reverse, that is to say, that the Dutch law did give a dis-

charge valid in England, and of course, a discharge of the debt. So much for the authority ; but, if he still doubt, I will refer him to Beawe's *Lxx Mercatoria*, where he will find under the head of bankruptcy, the old law of Holland, and a short history of its introduction. The proceedings were carried on before a tribunal called the Chamber of Desolate Estates, and, as I have heretofore stated, a certain portion of the creditors had power, by a composition with the debtor, to bind the rest. There was, also, at the same time existing, a provision for relief, similar to the judicial discharge of the French law, or our insolvent law, a *cessio bonorum*, by which a limited discharge was given without the concurrence of creditors, and perhaps intended for a different description of persons. This may have occasioned the apparent contradiction in the authority quoted.

In the multiplicity of the charges against this bill, another was made, which its advocates heard stated with no slight alarm, as it seemed at once to bring into the field against them an irresistible host of opponents, where they expected only to find friends. This bill was said to be deficient not merely in gallantry, but even in common justice to what was termed "the weaker sex." It was some relief, however, to find at last, that it was the law of Virginia, and not this bill, that was chiefly objected against. The bill proposes no change. Every lawyer knows, that what are technically called the choses in action of the wife, are absolutely in the power of the husband. He may reduce them into possession ; he may assign them, and it is only where, in the case of a general assignment, the assignee is obliged to go into chancery to get possession, that the court will compel him, as a condition upon which its aid is granted, to make some provision for the wife. All this is the effect of the existing laws. The reproach he has cast upon the law of Virginia, that it is "monstrous injustice," would be offered with more propriety to the Legislature of Virginia, for it does not belong to us to deal with the laws

of that state. Of this, however, I am sure, that he has misunderstood the Spanish law, when he supposes it to make provision for the "dower" of the wife, in case of the husband's bankruptcy. The word is "dowry," not "dower," and means not the part of the husband's estate, which (by the common law) belongs to the wife after his death, but the portion which the wife brings in marriage, and which, in the continental nations of Europe, is so far separate, that the wife may be a creditor of the husband. The Spanish law, in the part referred to, provides, that the wife shall not prove her dowry in case of a second bankruptcy, and instead of enlarging, diminishes her rights. Whether there is "monstrous injustice," as has been asserted, in the law of Virginia, which gives to the widow only one third of the slaves she brought in marriage, and that third only for life, I will not undertake to say. But this is certain, that what in those nations, where the civil law prevails, is accomplished by treating the husband and wife as separate persons, may be effected where the common law is in force, by means of a trust, (which, by the way, this bill would not injure,) and if that expedient is not more frequently resorted to, it is owing to manners, and not to laws—The gentleman from Virginia might, however, have found an apology for the laws of Virginia, and of the other states, or rather for their manners. Marriage is there an intimate union, founded in affection, and preserved in general with mutual faith and kindness. It is contracted in early life, while the feelings are warm and pure, and the simplicity of our notions regards it is an absolute union of interests, an agreement to share a common lot. The parties start together in the morning of life, together they bear the heat of the day, and if their lives are spared, they walk arm in arm till their equally lengthening shadows reach to their descendants, who are entering on the same career. No artificial contrivances of separate estates; no provident schemes of independence which neither desires; no such

arrangements as are found exactly where marriage, in certain classes, is almost a state of perpetual divorce from bed and board. And I would myself volunteer to rescue Virginia from the imputation of falling short of Spain in gallantry, by plainly averring, that what the Spaniards have in their laws, the Virginians have in their hearts, and leave it to the ladies of Virginia to decide which they prefer.

Great apprehension, too, is expressed by the same gentleman, least injustice should be done to those who may have had dealings with the bankrupt. "If," says he, "a debtor of the bankrupt disputes the claim made against him, he is liable to a heavy forfeiture of double the value on the ground of concealment." No doubt he thinks so, or he would not state it. But what is the fact? Is there any ground for the alarm? Is there any clause in the bill, that can, by any possibility, admit of such a construction, as, that a man cannot contest a claim he believes to be unjust, without incurring a penalty? If there be, let it be pointed out, and at once erased from the bill. But there is no such thing. The only provision that can be supposed to have given rise to such an imagination (and that must have been from a hasty or very prejudiced perusal,) is that which is intended to operate upon persons fraudulently concealing property and rights of the bankrupt, with a view to cheat his creditors. Are they entitled to any peculiar regard? Is it for dealing with just severity towards *them*, that this bill is denounced as tyrannical, rapacious, oppressive, and dangerous to the liberties of the people? I thought fraud or cheating was every where an offence, and a cheat—a mean culprit, who all would agree was deserving of punishment; and I still believe, that if this precaution had not been in the bill, the omission would have been urged as an argument against it. The want of due security against fraud, would be, in truth, a substantial objection.

In this multitude of exceptions, it is also made matter of very grave accusation, that the law is to be executed by irresponsible officers. I should like, before we proceed further, to know what the gentleman from Virginia means by "*irresponsible*" officers. Are not the commissioners to be appointed by the highest executive officer of the government, by the same power that appoints all your officers, civil and military, and to whom the power of appointment is entrusted by the constitution? Are they not responsible to him, and are they not responsible to us, exactly in the same manner as all other civil officers? Deriving their authority from the same high source, and accountable to the same extent, as the judges of courts, the commissioners under the Spanish treaty now in session, the governor and judges proposed by a bill on your table to be appointed for Florida, in what sense is it that they are to be "*irresponsible*?" Does he mean to be understood, that no officer is responsible unless he give security, which seemed to be his meaning? Let him then propose it, and at the same time propose to require security from other officers who have similar functions to perform, such as the governor and judges of Florida, and substitute for the responsibility of general good conduct, honour, conscience, and a regard for reputation, the meaner obligation of a nominal pecuniary liability. I say nominal, because at last it will be found, when he has got his bond, that the duties to be performed by the commissioners, like those of the high officers I have already referred to, are not to be estimated in money, and he would be extremely perplexed, if he were to attempt to fix the damages to be recovered for the violation, neglect, or inadequate performance of duty by judges, commissioners or governors, or even by members of congress.

In the hands of the gentleman from South Carolina, (Mr. Mitchell,) this objection took quite a different shape. The compensation of the commissioners is so low, he says, that the president will be able to get none but pettifogging law-



yers to fill the office. I will not stop to remark, that this difficulty, (if it existed) would be removed by increasing the pay. Nor will I detain the house to state, that in the United States we have no such *class* as that of pettifogging lawyers. The profession is in general a high and honourable one. There are occasional exceptions, of persons of low and sordid conduct and character, but they are marked and frowned upon by the profession, as well as by the community, and it must be a rare accident that would bring one of them into an employment of confidence. Of the *class*, I repeat, we know nothing but from books, which have given us an account of their existence elsewhere. And I will no more admit such a charge against an honourable profession, than I would admit those brought against merchants. At the moment, however, that he was giving utterance to this injurious apprehension, the practical answer was at hand. The compensation under this act is five dollars a day; under the act of 1800, as amended in 1802, it was six dollars a day, which is not difference enough to make any change in the character and qualifications of the persons to be appointed. Now, at the very time when the gentleman from South Carolina was stigmatising by anticipation, the execution of the law, there sat beside him, a most respectable member from Virginia, (Mr. Tucker,) who was a commissioner under the act of 1800. This is a practical answer, which may be extended by naming others, whom it would be superfluous to do more than name. The late secretary of the treasury, Mr. Dallas, a late representative on this floor from Pennsylvania, Mr. Hopkinson, a gentleman who has been governor of New Jersey, and is now in the senate of the United States, that governor of Virginia too who perished in the calamitous fire at Richmond, and many others of equal respectability, were commissioners under the former law. These facts might be sufficient to allay that gentleman's fears. Is it for a moment to be supposed, that the president of the United

States will descend into the low places of society to find incompetent and unworthy men to fill offices of this sort, contrary to all former experience, and in opposition to every motive of duty, of interest and honour, when he can readily supply them with men of high character and standing? It does really seem to me, that nothing but a prejudiced view of the matter, a predisposition, if not a predetermination to think ill of the law, could have led to conclusions so hasty and so palpably erroneous as both those which I have now had to notice. As to the messenger of the commissioners, if *he* was one of the officers who created this alarm, I will only say, make him what you please; let him be (as in fact he formerly was) the marshal, or the sheriff, or any body else, and require from him what security you think proper for his good conduct; all *that* is easily arranged, in less time than is required to talk about it, and with less labour too, if we are really desirous to have it done.

Another topic which has given occasion for the exercise of much ingenious speculation, and great diversity of view, is the subject of preferences. Before I approach the general question, however, let me put the gentleman from Virginia (Mr. A. Smyth) right, as to a specific objection he has made; it is, that the United States would be in danger of losing their priority or preference in payment, because, as I think he stated it, the assignment would vest the property in the assignees before the lien of the United States attached. I need not say, where there are so many lawyers, that lien and preference in payment are different things, and that it is not necessary to give priority, that there should be a lien, though a lien may of itself confer a preference. The priority of the United States is established by law, and does not rest upon a right of lien, and *that priority is expressly saved by the 60th section of the bill*, which has, I presume, escaped his observation. But the same gentleman objects with great earnestness, that this

bill takes away preferences, puts all creditors upon an equal footing, which he thinks contrary to good policy and justice, and contrary to the law of Virginia for distributing the estates of persons deceased. Another gentleman from the same state, takes exactly opposite ground, and contends that the bill is bad, because it does not effectually destroy the power of giving preferences. It certainly is, in the estimation of the friends of the bill, one of its chief excellencies, that it will, as far as practicable, take from the failing debtor, the power of paying one creditor in preference to the other, of giving the whole to one, and leaving nothing for the rest, as his own views of interest or feeling may direct; and that it will distribute equally the effects among all his creditors. To say that the law of Virginia, or the law of Spain, prefers some classes of creditors to others, and even to prove that it is fit that the *law* should do so, is nothing to the purpose, for the question here is not what the law should provide, but what the *failing debtor shall be permitted, of his own mere will to do*; and every argument that does not meet that precise case, goes wide of the mark. Has any one pretended to deny, that this power in the debtor who is not able to pay all his debts, produces the evils and mischiefs which have been heretofore stated? No. It cannot be denied. But the Speaker has endeavoured to avoid the effect of what I think an incontestible truth, by an argument something of this sort, in which he has been supported by another gentleman from Virginia: "It is just in any debtor to pay me that for which he had received a valuable consideration, and if it be just in him to pay, it cannot be unjust in me to receive." The answer is, that the proposition, if true, (and there may be great doubt of its truth, where the debtor acts from a selfish motive, and with a knowledge of his insolvency,) does not go far enough, and does not apply to the case in hand. It only proves that it is not unjust in the creditor to receive, if the law permit him to do so, but to be of any

avail, it ought to go further, and establish that it would be immoral and unjust for the debtor to adopt a different course, and distribute the remnant of his property equally among all his creditors, or for the law to prescribe that course to him, and forbid his giving preferences. If neither be unjust, it is an open question for the law giver, to adopt that policy which he thinks most just, and most conducive to the public interests. The argument, therefore, is altogether fallacious, and the rule it would furnish has never I believe been adopted by any legislature; but the distribution of insolvent estates has every where been the familiar subject of legislative direction. And so it ought to be; for in point of fact we know, and without the aid of experience we might take it for granted, that the preferences given by debtors are not in favour of the meritorious, the needy, the helpless, the ignorant, the distant creditor; those are apt to be overlooked and disregarded, and the provision is most likely to be made for the importunate, the wealthy, the watchful, those who are at hand, and those who are able to aid the debtor by future loans of money or of credit. The rule of equal distribution has intrinsic merit in it. The maxim of a court of chancery is, that "equality is equity," and as a general rule no better can be adopted.

The opponents of the bill, have, in several instances, contradicted each other. They have made objections and employed arguments of a directly opposite character. Most of them have regarded it as injurious to the creditor, subversive of his rights, and therefore, immoral and unjust. But the gentleman to whom I have so often referred, (Mr. A. Smyth,) has found out, that the project is too favourable to the creditors, that it is calculated to benefit them too much, that it is an energetic remedy, that, to use his own language, "it is calculated to fill the pockets of the creditor." Without attempting to reconcile these inconsistencies, it might fairly be claimed as some merit in the bill, to have so conciliated the conflicting rights of debtor and creditor,

that one set of its enemies are driven to urge that it has done too much for the former, and the other, that it has done too much for the latter. If it had done more than it ought for either, at the expense of the other, this would have been the ground of objection maintained by all, uniformly and consistently. As to the assertion that it will "fill the pockets of the creditors," I will only say, that if he who made it can establish its correctness, he will become by far the most powerful advocate the bill has had. He will gain over all those who are the exclusive friends of the creditors. Its most sanguine friends have never promised so much, and *they* would be deemed extremely visionary indeed if they were to hint that the pockets of creditors could by any legal contrivance, any legislative alchemy, be filled from the wrecks of insolvent estates. It is at least, a very singular *objection*.

There are some objections which I hardly know how to dispose of or treat. It would be fatiguing to me, and more so to the committee, if I were to notice all the little matters, some of them extremely minute and not worthy of the time bestowed upon them, which have been pressed into the service of our opponents, and arrayed against the bill. We are told, for example, that there is to be no duty paid upon sales of bankrupt estates by auction, and this is no less than an invasion of state rights. One would be led to suppose, from the seriousness with which it was brought forward, that it was a *new* as well as a *most dangerous* and alarming invasion. And yet it so happens, that it is not new, and I think it cannot be dangerous, for it was long ago made in a most peaceful manner, and it is still going on without complaint or resistance. Does not the Marshal every where sell under process of the federal courts without paying auction duties? If it had been proposed to make bankrupt estates pay auction duties, in order that creditors' pockets might not be "filled" too full; to render this new discovered mine of wealth a source of revenue;

to tax all who ask the aid of this newly invented and magical power, such a proposition would have been intelligible.

Another most formidable objection, of danger to the rights and liberties of the citizen, seriously insisted upon, was this:—If a commissioner, assignee, or other person acting under a commission, should be sued for any act done in the course of his duty, and the suit should be decided in his favour, that is, the plaintiff should fail in his suit, what then is to happen? Why doubtless we are prepared to expect some dreadful catastrophe, of which the plaintiff, who has only brought a false and vexatious suit, is to be the unhappy victim—fine and imprisonment at the very least, if not death or torture. And what is it? *He is to pay double costs.* This is a small matter to differ about, and rather than gentlemen should be seriously disturbed, I should be inclined to make it only *single costs.* If time and the patience of the house would permit, it might be shown, however, that even this dangerous provision is not wholly indefensible. It has been in the collection law of 1799, for more than twenty years, without doing any mischief. It was introduced into the collection law of 1815, and there remains uncensured; and the embargo act of 1809, made a much larger stride towards this imaginary tyranny, for that actually gave *treble costs!* But, the truth is, that this is the most moderate penalty that can be devised, for the security of persons acting under public authority against unjust, and unfounded, and vexatious suits for what they do in the discharge of their duty, and as such, is frequently, nay, habitually, resorted to.

Of still less force, is the imputed invasion of state rights, with regard to gaolers, by making them liable for escapes. We all of us know that the United States government have no right to use the gaols of the states, nor of course to employ their gaolers without their consent. Where the use of the gaols is permitted by the states, the gaolers

thereby become the gaolers of the United States, and are, and ought to be, universal'y liable for escapes. If these officers were, or could be, subjected to such responsibility without the consent of the states, there might be ground for complaint, and to those who are excessively afraid of encroachments by the general government, there might be ground also for apprehension. But it is always under a law of a state (which they may pass or not at their pleasure,) that its prisons are used by the United States, and then the gaolers are to be considered as only performing their ordinary duty, with their ordinary compensation, and under their ordinary accountability. It would be rather below the dignity of grave legislation, to enact that the gaoler should be at liberty to let his prisoner go free. Some person who did not perplex himself with deep speculations, might confound us by asking what gaols were for.

None of the objections to the bill, however, have struck me with more surprise than those which seemed to spring from a sudden, newly awakened, but unfortunately, not enduring sympathy for the unfortunate bankrupt. They gave me, I will confess, a momentary pleasure, for the source from which they seemed to flow, was one from which we much relied for aid. But the grateful feeling was instantly checked. It was impossible to avoid perceiving, that it was the spirit of opposition to the bill, and that alone, which was at work, even when the better genius of humanity was invoked to furnish an argument. What is it we hear? Why the gentleman from Virginia, (Mr. A. Smyth,) tells us, the certificate will not be an effectual security to the bankrupt, *for it may be questioned upon the ground of fraud and concealment, and set aside if fraud and concealment are proved.* With all our exertions we have not been able to engage his sympathy on behalf of the *honest but unfortunate debtor*, and here it bursts forth at once in favour of the *fraudulent bankrupt*. Let me ask one question. What would have been thought of a bill

without such a provision? Would it not have been stigmatised, and justly stigmatised, as an open and inviting refuge for fraud? Perhaps it is meant only, that the creditors may contrive to have the certificate cancelled and annulled without a just cause, by false evidence or from misunderstanding the case. No man can say that this *may* not happen; it is certainly within the range of possibility. But if it should, and I believe it never has, ought we for this remote, possible contingency, to withhold all legislation? If some should be unjustly deprived of the benefit of a certificate, others will obtain it, and so far we shall do good. The same motive should induce us to repeal all our penal laws, for it is not only true that it may happen, but it actually has happened, (as that gentleman's legal reading enables him full well to know,) that the penalties of the law, even the punishment of an infamous death, have fallen upon innocent men.

In like manner it is objected, that the bill requires the concurrence of two-thirds, in number and value, of the creditors to give a discharge, when according to the views of some, the commissioners alone ought to have the power, whether the creditors consent or not. This would be to disregard what the experience of every other nation recommends, for they all agree in requiring the consent of at least a majority of the creditors, before the bankrupt can be discharged. Still, though I incline strongly at present to the section as it stands, if the gentleman who has given us this view, (Mr. A. Smyth) will propose an amendment to the effect he has mentioned, meaning thereby to promote the passage of the law, I will do my best to go along with him, and do not doubt that I shall be able to overcome my difficulties, if he can get rid of his. I must, however, in passing, inform him, that he is in an error when he says, the Lord Chancellor in England has the power of compelling the creditors to sign the certificate.—It is not so. His own authority, if he will consult it again, will satisfy him on



this point. And, without even that trouble, he may perceive, that there would be no sense in having the signature of the creditors at all, if they could be *compelled* to sign.

After so long detaining the House, it would be inexcusable to follow all these statements in detail, and yet, if they were worth making, they are perhaps worth refuting. When one who has been at great pains to inform himself, and to give information to others, has fallen into so many mistakes, it is quite impossible to say, that he may not have led others into them: they are unimportant, individually, but collectively, they make a startling host. He has told us, that the old law was in operation but eighteen months, and cases remain undetermined after eighteen years. In pursuing the antithesis, he has lost sight of the fact. It was in operation more than twice the time, that is to say, for *three years and eight months*. Some hundreds of cases were decided, as appears from official documents on the table, to which I mean hereafter to refer; and it does not appear that any remain undecided. Certainly, I admit it to be highly probable, and believe it to be the fact, that some of the numerous concerns of these numerous estates have not been closed, and some of them never will be closed. Is that the fault of the law? Just as much as it is the fault of the people and the government, that claims arising out of the war of the revolution are still, after forty years, unsettled and unsatisfied, and every day presented to us for liquidation, or that some will inevitably remain forever unrequited. It is owing to the nature of the concerns themselves, and not to any defect in the administration of the law.

But all the controversies arising under the bill will go into the Federal courts for decision, and here is a formidable fact for all who are opposed to the exercise of the Federal judicial power.—There is an obvious answer. The extent to which this may be carried, depends upon the pleasure of Congress, who may make the law in this respect

exactly what they please. The present is not a fit time to discuss the question, but there will be full opportunity hereafter, and whatever the House may decide, will of course be acquiesced in by the friends of the bill. Unless those who make the objection, will show that it exists, otherwise than by general denunciation, and apply their efforts distinctly and specifically to remove it, they ought not to make a clamour, calculated only to awaken unreasonable prejudices upon a subject too little understood already.—Well, but have we not even a weightier sin to answer for? The gentleman from Virginia (Mr. Smyth) who has pursued this unfortunate bill with unsparing and unrelenting severity, has stated that the law, if passed, would create an enormous body of commissioners, an army indeed, adding, in a parenthesis, *probably not less than three thousand!* And the representation has gone forth among the people. They will be forced to conclude, that we are going to bring upon them something like an Egyptian plague, a flight of locusts “to come up upon the land, and eat every herb of the land,” and reduce them to famine—or perhaps they will imagine, that they are to have domiciliary visits, or to be waited upon by a host of excise-men, with inkhorns at their button-holes, and authority to search and seize in their pockets. *Probably, not less than three thousand commissioners!* I should like to know how this terrific calculation was made, for I am sure that such a number could not find employment, and if they should become dangerous, it must be from mere idleness. Let us see. Under the former law, there were not more than five commissioners in any one state, in some there were fewer, and in some there were none. It is not necessary to be very particular when we talk about thousands—we will allow an average of five for a state, which is more than twice as many as will be wanted. That will give us for the union, one hundred and twenty. Let us have one hundred commissioners, to execute the law, and he is welcome to the balance of the three

thousand, to dispose of as he thinks fit. If that will not satisfy him, there is a very simple expedient that will make assurance sure. Let him provide in the bill that the whole number shall not exceed a certain limit; let the President be expressly forbidden to raise this host.

I will not dwell upon what has been said of the penalties denounced by this act, against persons convicted of perjury or fraud, nor attempt to settle precisely what term of imprisonment, or what pecuniary fine ought, according to the most scrupulous and exact calculation, to be inflicted upon conviction. In taking the maximum, however, of ten years imprisonment, as the punishment to which "four several offences which a bankrupt may commit," are subjected, and thence deducing its oppressive character, the gentleman from Virginia (Mr. A. Smyth) has not done justice to the bill, for it is to be "not less than twelve months nor exceeding ten years," giving a discretion, within those limits, to the court before whom the offender may be tried. In the contrast which he presented between the general law for the punishment of perjury, which he says, inflicts only three years imprisonment, and the present bill, his statement was also short, for it wholly escaped his notice that the pillory was in the former, and not in the latter. I confess myself unable to estimate how many dollars of fine, or how many days of imprisonment, may be an equivalent for an hour in the pillory. Let the convicted culprits judge of that, but let the community be spared the pain and distress of being obliged to witness a public exposure, as inconsistent with sound policy, as it is with all just feeling. This bill has not to answer for perpetuating a mode of punishment, which most of the states have abolished; nor has it to answer for copying the bloody penalties which are the opprobrium of the bankrupt law of England, and one great cause of its failure. The penalties are mild, and conformable to the enlightened spirit and humane disposition which pervade our country.

Is it in conformity with the same spirit, some one will now be ready to ask, that we allow doors to be broken, in pursuit of a fraudulent bankrupt or his property? This power has been severely censured by the gentleman from Virginia, (Mr. Smyth,) and a gentleman from South Carolina, (Mr. Mitchell,) whose views were in general much larger than this objection implies. They represent it as unreasonable, as cruel, in derogation of common right, contrary to our established notions, and even unconstitutional, not to permit the fancied privilege of an outer door to stand between a fraudulent bankrupt who is seeking to conceal himself or his property, and the just claims of his creditors: And the latter gentleman has even gone so far as to assert, that the people of South Carolina would not submit to its exercise; that it could not be executed; that they would resist at every hazard. He has not done justice to the good people of South Carolina, who I believe, are as little disposed as any part of the United States, to resist the execution of laws rightfully enacted. And for whom is it thus assumed that they would array themselves in open hostility against the laws? For whose rights is it, they are supposed to feel such tender regard, as to assert and maintain them at the extreme risk even of shedding blood? It is for that man, who has been described as a degraded being, one without a home, who belongs to every country and no country, who has no stake or interest in society. That is not all, it is to be for one, who to the imputed and unmerited degradation thus ascribed to him, has added the real degradation of fraud—the fraudulent bankrupt is to summon insurrection to his aid, to put down the execution of a just law—It is all a mistake. The state of Virginia and the state of South Carolina, have adopted the English Common Law, with some modifications. That law does give us the phrase, “that a man’s house is his castle,” indicating by the terms in which it is expressed its feudal origin, and the proud spirit of the feudal lord, who, proba-

bly, relied upon something stronger than the law to preserve his "castle" from violation. But as now understood, it is nothing more than this, that the outer door of the house shall not be broken to serve civil process upon the owner or his goods. Where the outer door is open, the inner doors are no security; where the officer has once obtained entrance only for his arm, he may go on even with force—It must be process, too, which is merely civil; if it be but tinged with criminal character, doors, outer or inner, are not in the way—And what outer door, is it, that has even this privilege? Of the house of the person against whom the process is directed. One man's house is not permitted to protect the person or the property of another. So very limited is the common law privilege, which is the ground work of this pompous phrase, that a man's house is his castle, and which has been made the theme of so much declamation. It is not at all invaded, and if it were, cannot we alter the common law? Whenever bankrupt laws or attachment laws have been made in the United States, it has been entirely disregarded, they have contained and do now contain the very provision, so much inveighed against in this bill. The common law does not permit process to be served on Sunday, and yet the attachment law of Virginia, directs, that attachments shall be issued and served on Sunday, which is obnoxious to exactly the same remarks—Now, what is the provision of this bill? The most guarded, at the same time that it is the most indispensable that can be conceived. Upon probable cause, supported by oath or affirmation, doors may be broken in the day time, to reach the person or property of a fraudulent bankrupt, secreted within them. Remember, the process is not civil, but criminal. The common law privilege, does not even in theory extend to it. Gentlemen who make these objections, and especially those who talk of resistance, must permit me to tell them, that they do not know the laws under which they live, at least they have not

considered their operation in relation to the subject in hand. The people of South Carolina, and the people of Virginia, too, not only submitted without resistance to exactly the same clause in the former bankrupt law, without a murmur, but they are now, and for years have been living peaceably, and in the undisturbed enjoyment, as they have believed, of all their rights, under laws of the United States, giving precisely the same powers. The collection law of 1799, and that of 1815, both authorise collectors to break dwelling houses—Where is this sleeping lion of which gentlemen profess to be so much afraid. He must have slept profoundly, or been very good natured, for they did not even know of his existence—It is the cage they dislike, and not the lion. The truth is, that such powers are cautionary or preventive, rather than active. The knowledge of their existence, saves the necessity of exercising them. The cases are rare and flagrant in which their exertion is required, and then they are indispensable; their omission would be absolutely unjustifiable, and would betray gross ignorance, or unreasonable concession to speculative fears. One single instance of successful security obtained for the person or property of a fraudulent bankrupt by means of this fancied privilege of the dwelling house, would give occasion to more well founded complaint, than could arise from the exercise of the power for a century.

Of a like nature is the censure upon the bill for giving the authority to issue process, which will follow the person from one part of the United States to another, as, for instance; to seize him at New Orleans, upon a bankruptcy committed at Boston, and bring him back. And why not? An extreme case ingeniously put, may occasion a momentary pause. But is this any thing new? Do not gentlemen know, that under a law of 1793, subpœnas from the Federal Courts will run from one state to another, and that of course attachments to compel obedience to them, or rather to punish disobedience, are equally unlimited in their ope-

ration. And whom is it that this process, now complained of, is to pursue and seize? The *fraudulent bankrupt*, who is running away to cheat his creditors, and who is entitled to no compassion.

I know, sir, that I have occupied much of the time of the house in answering these objections, perhaps too much. I will not disguise that I feel relieved in having had the opportunity of showing, that some of the most formidable amongst them, urged as if in fact they existed against this bill, were in truth applicable only to the law of England; and that others, however strongly insisted upon, had no foundation whatever, owing their support to nothing but the zeal and ingenuity of those who brought them forward, and requiring only a little examination to expose their fallacy. It is unfortunate, that the bill, from its necessary length and variety of detail, has little chance of being carefully studied and understood, and is on that account peculiarly exposed to the danger of misrepresentation. The friends of the measure, could not but be concerned, that the statements which you have heard, should go forth to the world without contradiction; and that those who framed the bill, should be subjected to the mortification of being supposed to have constructed it in so careless or unworkmanlike a style, as to defeat their own object, and disappoint the anxious wishes of those who have asked our interposition. This would, indeed, be a severe censure, but one they know they do not merit—for *these objections, however plausibly stated, have all of them come from the declared enemies of a bankrupt law under any modification whatever, who would just as readily vote for the present bill, as for any other that could be devised to accomplish the same end.* If the bill should become a law, it will vindicate itself. Its first humane and effective operation will signally refute the arguments and objections brought against it here and elsewhere. But if it should be rejected, and not permitted to speak for itself, it is much to be feared that its true character would

not be generally understood, nor, consequently, the motives of those who have given it their support. The house will therefore pardon me for having so long detained them upon this part of the case.

Before I proceed to the more immediate examination of the constitutional question which has been raised, in order that the discussion of it may be free from the embarrassment of any extrinsic considerations whatever, the committee will permit me to say something of retrospective laws, a topic which has been much insisted upon by the opponents of the bill, and especially by the speaker, (Mr. Barbour,) but I think entirely misunderstood. I fully agree with him, and with the learned and eminent judge whom he quoted (Chancellor Kent) that the principles of sound legislation are opposed to retrospective laws, as essentially unjust, and inconsistent with all our notions of good government. But what are retrospective laws? Here it is that our opponents have erred, by assuming what has not been proved, and what I venture to affirm cannot be proved, that such a bill as that before you is justly obnoxious to the censure of being retrospective, because it suspends, or if you please, under certain circumstances, takes away the remedy for antecedent debts discharging the future effects, as well as the person. A retrospective law, is a law that impairs or affects the vested rights of individuals. Every man has a vested right in his property; a law would be retrospective and unjust, that should take the property of A, or any part or portion of it, and give it to B. A man has a vested right in his contracts, interpreted according to the laws in being at the time and place where they were made; and so far the argument is correct, that contracts are property, or to speak with greater precision, are upon the same footing in point of inviolable security. A law that should vary existing contracts, as to their interpretation or meaning and true effect, would be retrospective and grossly unjust—It is also a great political truth, that every citizen



of a well constituted community, has a general right to the benefit of such remedies, to enforce the performance of contracts, as a just attention to the great interests of society will permit, and the interests and rights of others do not forbid. This is the equivalent he receives for the surrender of his own power, that he shall have the aid of the power of society, to the extent and in the manner which the legislative authority shall deem fit and proper. But has a citizen, of this or any other country, a vested right in any particular remedy, so that it can never, as to him, be either taken away or altered? If the creditor has this right, so has the debtor; and then the absurd consequence would follow, that the remedies provided by law, and existing at the time the contract was entered into, could never as to the parties to that contract, be either enlarged or diminished. If any part of the property of the debtor was, by law, exempted from liability, as for instance his land, it could never be subjected to execution. If his person was not by law subject to imprisonment, it could not be made so. On the other side, it would follow that nothing could be withdrawn from execution. You could not, under the influence of any motive, however urgent, exempt the bed upon which a man's family repose, the cow which gives nourishment to his children, the tools of a mechanic which enable him to provide for himself and his family, without the aid of public relief. To such extravagant lengths does this doctrine lead! It is in the face of every day's experience. Legislation is constantly employed in modifying the remedies, sometimes enlarging and sometimes diminishing, often giving the creditor more power over his debtor, seldom doing any thing for the latter.

The remedy is no part of the contract. The remedy depends both upon time and place, while the interpretation of the contract, and its legal validity, are uniform and permanent, wherever and at whatever time it may come in question. When one man gives another a promissory

note, is it any part of the contract, that he shall have the power to put the debtor in gaol if the note be unpaid, or shall have an immediate suit, or an immediate judgment? This depends upon the will of the legislative authority at the time and place, where he may endeavour to enforce the performance. But the validity of the contract, its interpretation and meaning, are governed conclusively and perpetually, among all civilized communities, by the law of the time and place where the contract was entered into.

If a contract be made in the state of New York, where the interest of money is seven per cent., it is a part of the contract to pay seven per cent. interest—and whether it be put in suit in New York or in Pennsylvania, that will be its construction. If the interest of money at the time of entering into the contract were six per cent., no subsequent reduction would affect or alter it. So, if it be to pay money at a certain time, it will no where be considered as payable immediately; and if it be to pay at once, no legislative power would make it payable at a distant day. Thus, the contract is every where and at all times the same.

But the remedy depends upon the law of the forum, where it is put in suit, at the time when it is put in suit. So entirely is this the case, that even the statute of limitations of the place where the contract is sought to be enforced, is the one which is to be applied to the contract, and not the limitation established by the law of the place where made.

And as it is competent to the legislative power, from time to time, according to the exigency of circumstances, to vary the remedies which individuals shall have against each other, or to define the manner in which they shall be permitted to employ the power of society, to enforce their private rights—so is it competent, and even indispensibly necessary, that the legislature of a well constituted community should have authority to declare that under certain circumstances, where the public good, and a due regard for the interests of all require it, the remedy shall entirely

cease, and the creditor be no longer at liberty to use the power of society to enforce his claims—to provide that the effects shall be discharged, as well as the person. The history of the world had proved its necessity—the insurrections and secessions at Rome, had shown, that an unmitigated execution of severe laws between debtor and creditor, was a mode of oppression, as unjust and dangerous as any other whatever. It had produced convulsions, and might do so again. The experience of the world, including the states which compose this union, had established the lawfulness of its exercise. And no plan of government would be complete, or safe, or just, without it.

Not that the legislative authority can release a man from the moral or conscientious obligation to fulfil his contract—this transcends all human power. The bill on the table does not attempt to do so—it does no more than declare when in the case of an insolvent debtor, who by a summary remedy has been compelled to surrender all his property for payment of his debts, a certain proportion of his creditors concurring, he shall no longer be subject to the process of the law, but be relieved, effectually and finally from the oppressive weight of the power of society wielded by the creditor. His duty in conscience remains, as it does in many cases where from reason of policy, contracts are prohibited and declared void. In the instance of usury the laws of England make the contracts void, and courts of law will not enforce them. Yet, if the debtor is obliged to go into a court of equity for relief, he can only obtain it upon the terms of fulfilling his conscientious obligation, that is, of paying the principal and legal interest.

A retrospective law, which is obnoxious to the objection, is a law that operates upon the vested right in the contract—a law that alters the remedy, is in no sense a retrospective law; it operates upon no existing right, but is the exercise of a power which belongs to society for the common good, and subject to which all contracts and dealings

take place—the power, to be used with sound discretion, of providing the remedies of individuals against each other. Any other exposition of it would be impossible.

It might with equal truth, and with as much force, be contended, that imprisonment for debt could not be abolished as to antecedent contracts. Imprisonment is a mode of compelling payment, and sometimes a very important one. A man may acquire property after his discharge under the insolvent law, and hold it in such a way, that it cannot be reached by process of execution. To relieve him from liability to imprisonment does certainly in such a case impair the means of enforcing the payment of his debt. Yet who ever heard that such a law could be objected to as retrospective? So if the policy of society required, that a portion of the property of a debtor should be exempted from execution, as some little household furniture, or his tools of trade—There would be no end to the embarrassment and gross injustice of such a doctrine. It would be a sort of formal and pharisaical morality, without substance, and without any real respect for the duties and rights of humanity, or the peace and safety of the community.

The truth unquestionably is, that it is impossible to construct a bankrupt or an insolvent law, that shall not operate upon antecedent debts, as has already been shown. The power to make a bankrupt law, must therefore necessarily imply the power to give it such effect—And if it could be so constructed, there is no good reason why it should be; for as to the relief it is to afford, it can nowhere be better applied than to those who actually stand in need of it at the present moment. Accordingly the Supreme Court of the United States, in their examination of the powers of the states, have made no such distinction, as that which has been here contended for.

The question, therefore, simply is, whether the constitution of the United States gives us the power to make a bankrupt law, which will discharge the effects as well as

the person of the debtor from liability. If it does, there is no pretence for limiting it to mere prospective operation; for all rights of individuals are as much subject to this great fundamental law, and the provisions it contains, as they are to any particular law that may be passed in pursuance of those powers; as much subject to it, as if it had contained a bankrupt law at length.

Does the constitution permit us to pass such a law? At a very early stage of the discussion, I was interrupted when addressing to the house, some general views in support of the bill, with a request to answer this supposed constitutional objection before it had been distinctly made. That was not the fit time; if an answer by anticipation had been then attempted, it would have been without the means of knowing what the precise nature of this new objection was, for I confess that I should not have been able to understand it as it has since been stated. There might have been some danger, too, of weakening the ample refutation it has since received. It has been triumphantly overthrown by the advocates of the bill; they have had the aid, and concurrence too, of some of its opponents. One gentleman from South Carolina, (Mr. Lowndes,) met it with a most satisfactory argument, proving conclusively that the principle of construction upon which it is founded, is vastly more dangerous than the bill can possibly be—another (Mr. Mitchell) commenced his speech by expressly repudiating it—others have passed it by without notice; and it is doubtful whether at this moment, it is entertained by any member of the house, but the three gentlemen from Virginia.

Even these gentlemen do not agree among themselves. There are more than shades of difference between them. I understood one of them (Mr. Archer) to argue, that even if the constitution gave the power expressly (as it assuredly does) it would nevertheless be immoral to discharge the bankrupt from liability, and therefore immoral to exercise

the power. It would be void, for that is the legitimate conclusion of the argument. Yet he admitted that a discharge for a time, with a power in the judge to declare the bankrupt liable, when he should acquire more property than was necessary to maintain his family, might be fit and proper. Something like that is the law of Hamburg. It seems to me to concede the whole ground.

Another of these gentlemen (Mr. Barbour) seemed to argue that such an act of legislation transcended the rightful power of society—was immoral and unjust. Once a debt, always a debt, is the maxim; and properly understood it is undoubtedly true; but in the sense in which it is here employed, it is as undoubtedly without foundation.

I must here protest against mounting higher than the constitution, to discuss speculative doctrines in morals, in order to get rid of the plain provisions of that instrument, so clearly expressed as to seem to render doubt impossible. All beyond, must be opinion—Whose opinion, what standard shall we adopt, if we once abandon the great constitutional guide, and set up theoretical reasonings to confound its obvious practical precepts? What writer shall we resort to for instruction? Sir, we are not here to pursue abstractions, to follow out politico-moral discussions, to debate about metaphysical entities or non-entities, with scholastic subtlety—to chase the horizon, which we can never reach; or to ascend above the walks and business of men into the regions of airy speculation. Our duty, under the constitution, is with man and his nature, gross and chequered as they are; a being (like ourselves) with senses, affections, passions and appetites—subject to error, born with infirmities, scarcely master of himself, and not at all the master of events—liable to misfortunes, which prudence can neither guard against nor prevent—who at the moment when he seems to be putting down his foot on firm ground, may be sinking into a quicksand, or coming within the circle of a whirlpool from which he cannot extricate

himself. We must quit the regions of speculation, and etherial beings, and descend in our legislation to the humble ground of common sense, applied to creatures of earthly mould, for with such at last we shall find we have to deal.

When men are brought together in society, it is not only lawful, but it is deemed useful and honourable that they should engage actively and zealously in the pursuit of those things which are the ordinary objects of desire—wealth, fame, distinction of every sort, fairly acquired. These feelings are quickened by continual excitement. The objects of desire are brought nearer, they are enhanced in value by the very protection afforded to them, the motives for pursuing them are multiplied, and, at the same time, rendered more powerful—and while the excitements are thus increased, the race more eager, the competitors more numerous, the stimulus more continual and powerful.—

What is it, according to this new theory of morals, that society, instituted for the happiness of all, undertakes to do? To lend its whole power to oppress the unfortunate; to add its whole force to the overpowering weight of calamity; to put its foot, as it were, upon the neck of those who have fallen in the race, and keep them for ever in the dust. Yes; such things have happened in the history of the world. The body of the debtor has been given to the creditor; the debtor and his family have been condemned to slavery; the debtor to interminable imprisonment. The common law had it for a maxim, “that he who *cannot* pay in his purse, must pay in his person.”

But these are the stories of dark and barbarous ages; the light of civilization has chased them away, and it is now the familiar judgment of mankind, that this great moral achievement is not only the fruit of civilization, but marks decisively, and with unerring truth, the stage at which any nation may be considered to have arrived in her progress.

And what says the history of mankind? Is there any

civilized nation, or was there at the adoption of the constitution, any civilized nation, any society of Christians—for Christianity has every where been attended by civilization—among whom the power did not exist, and upon fit occasions was not exercised, of regulating the relation of debtor and creditor, and fixing the terms upon which the aid of the whole strength of society shall be afforded to the latter, and the point at which it shall be withheld? Name the nation in which a doubt ever existed. Does any writer on public law, or any writer on ethics, however rigid, insist upon such a doctrine? The right of *eminent domain*, as some authors term it, or the right of *transcendental propriety*, as it is called by Puffendorf, which has been alluded to in the debate, has no relation to the matter in hand. That is an inherent right of society, however constituted, a conservative power essential to its existence, and not derived from grant. It is a power of self preservation, and means nothing more than that the community has a right, in certain exigencies, to take or to sacrifice the property of individuals, for the safety and advantage of the whole, which is attended with the correspondent obligation to make compensation out of the common stock, if that can be done. But what has this to do with the question, whether we are bound to permit one of our citizens forever to follow another, who has been unfortunate and surrendered all his property, with the process of the law, exercising over him a violent dominion of terror, driving him to idleness and despair, or obliging him to take shelter in fraud, without even the probability of obtaining any thing by it but the gratification of evil passions?

There is, indeed, one view which arises out of this suggestion, where a close and decisive analogy will be found. It is as much the duty of government to protect the property of its citizens against foreign force, as it is to give them remedies against each other. It is even a more interesting duty to the citizen. Does it follow, or has it ever been conceived,



that government is in every instance bound to fulfil this duty by an appeal to arms where justice is withheld—to involve the nation in all the calamities of war, wherever the rights of property of an individual have been invaded? It is a matter of high discretion, and so is the regulation of the domestic remedy.

But, I repeat, is there any nation that has doubted, or any writer who has denied the morality of the power? The expediency of its exercise, under given circumstances, is quite a different question. You have already had the example of a large portion of the civilized world, England, Scotland, Ireland, Holland, France, Spain: and let me add Hamburg. You have had the examples of some of the states of this union, Rhode Island, New York, Pennsylvania, Maryland—one of them, too, (Pennsylvania) having a good bankrupt law in force at the very place where the convention was sitting.

This may all be a mistake; a new discovery may have been made. And what is it? Why it is, in substance, that to make such a law transcends the power of society—and why? Because it is against good morals and contrary to the dictates of justice. Such is the sum of the argument, fairly stated. It has an imposing appearance, but it will be found to be an argument in a circle, and the error of those who wield it with so much apparent triumph to consist, in not going far enough back for their premises—in assuming that, which is not and cannot be established.

What is the meaning of the position, upon which this whole assumption of immorality stands? Is it that no political community *can* rightfully possess the power? It must be, or it is nothing. For if it mean only that it is unlawful and immoral to exercise the power, because it has not been conferred, then it is a mere truism, of exactly the same import, as if one should tell us that we could not rightfully exercise a power which the constitution denies to us.

The position then must be, that no political community

can possess the power, which may be confidently pronounced to be untenable, and which every reflecting man who will be at the trouble to examine it, will concur in pronouncing to be so. The very reverse is true—no well constituted political community can be without it, and it would be a disgrace to the constitution, if it did not contain a provision, so just, so humane, so indispensable, that its omission would argue a blind and obstinate disregard of all the most obvious lessons of experience.

We are led here into an examination of rather an abstract kind, and almost painful, as it always is to enter into researches which have been long since practically made, and resulted in the establishment of certain familiar truths open to every one, and commonly received as first principles.

Our government is founded upon contract, not implied, but express, realizing what was once thought to be an idle vision, a mere creature of the imagination. All power is in the people, and they have parted with as much of it by the constitution as they thought proper to give, retaining the rest, and retaining too the power to recall or alter what they have granted. The power of a government, thus constituted, embraces all which those who formed it could rightfully give, and have chosen to confer, or, if you please, to relinquish. There are rights which are in the strictest sense inalienable, and which individuals cannot part with; such is the right of self-preservation. The declaration of Independance enumerates them, "life, liberty, and the pursuit of happiness." I am not going to enter into the contested question, whence society derives the right to take away life for crime. In return for what is given up, individuals obtain a most substantial benefit; the protecting power of the whole is extended to them, to secure life, liberty, and the pursuit of happiness, as well as property. The most prosperous have the largest share of this protection, for they have most to be secured. Now, I will ask

whether any one can seriously maintain for an instant, that individuals have no right to give up to society, the whole regulation and control of the relation of debtor and creditor? Cannot a man release his own debt; and if he may, cannot he permit it to be done by others? Is there any thing immoral or unjust in doing so? Is the right of property an inalienable right? I will not ask whether it does not owe its very existence to society? Surely all the power over it might be thus transferred, every modification of it, even the fruits of a man's own acquisition. There are societies in which property is in common. Is it immoral or unjust? It may be impolitic or unwise.

Suppose, then, it should be agreed, in the social compact, that the creditor shall be aided to enforce the performance of contracts, but that the governing authority shall decide when and to what extent. Is this immoral or unjust? On the contrary, is it not proved by all experience to be indispensibly necessary. Or, suppose it to be agreed that this may be done by laws that shall operate on existing as well as on future contracts? Is that immoral or unjust? It is salutary and necessary, and what any people would adopt, and what I think those who have made the objection, would, if called upon to make a frame of government, themselves adopt without hesitation. It is a power necessary for the purposes of humanity and justice. It is a precaution necessary for the peace and safety, and well being of the community; even for the creditor himself, whose interests are involved in the common fate and are in danger from whatever threatens the public tranquility.

If such a power be given by the fundamental law of society, by the constitution—is it immoral or unjust to exercise it? Hitherto we have only been looking at the right and interests of creditors, forgetting that the unfortunate debtor is also a citizen; that *he* has rights, which we are bound to consider and respect. Indeed the whole argument against the bill, seems to have been directed by an over

jealous concern about creditors, as if the constitution had been made for them alone, and the debtor had no part or lot in the matter. It might be sufficient to say, that if the authority exist, every contract is of course subject to its exercise. But that may perhaps be thought too technical—let us take a more practical view of the matter. “The interests of debtor and creditor,” says the Speaker, “are directly opposed, what you do for one, must be at the expense of the other, and that is not just.” In entering into this social compact, or forming constitutions of government, men are to be regarded as equally capable of becoming debtors or creditors, they may equally expect that they or their descendants will be fortunate or unfortunate, and in making the concessions by which government is empowered to enforce the demands of justice, they are therefore equally concerned in providing for these contingencies. Their interests are, at that time, not adverse, but the same. In the course of time, what was common to all, is displaced by individual circumstances, what was foreseen and intended to be provided for, actually happens; one pursues an occupation of risk, the other has the more stable dependence of a profession or farm; one is fortunate, another unfortunate; one is rich, the other poor: one a debtor, the other a creditor. Their interests become adverse, their feelings opposed, and then it is that the umpire of the law interposes, clothed with the authority they have themselves conferred, while they could regard the matter with impartiality. And the umpire is bound by the true spirit of the compact to execute it in this, as in every other provision.

It is a great mistake to suppose, that the creditor, or the debtor either, who comes under such a constitution, to ask you to execute the authority conferred, seeks from you a dispensation of *mercy* or *charity*. It is *justice* he demands. It is his *right*, and we are not warranted in repulsing him from the door, telling him “begone, we have no charity to bestow.” All are to be protected according to their exi-

gencies, not one at the expense of another—neither is it any answer, to say (as has been said) “*we do not want it;*” we might give the same reply to every class of petitioners who come for aid or relief. If the savage foe were on our borders, and the inhabitants, threatened with cruel death, were obliged to abandon their lands and houses, we might say, “what is that to us, we have no lands there, we have no fear of the enemy, we do not hear the frightful sound of the war-whoop, nor see the gleam of the tomahawk.” But what would be thought of such an answer? If there be a class of men whose pursuits and relations are such that a peculiar legislation is necessary—and such there is as the gentleman from South Carolina, (Mr. Lowndes,) has most clearly established, it is for them that this power was introduced into the constitution, they *have a right to ask*, and *we are bound to grant its benefit*. The merchants of the United States, aye even the unfortunate insolvent ones, do not come as beggars to the door, and solicit it as a favor, they demand it as a right. You have scrupulously, and to the letter, carried into effect all the powers for the security of property, and for enforcing claims. You have surrounded the prosperous with safeguards, as it was right you should do. For citizens of different states, and even for the foreign creditor you have established impartial tribunals, above the reach of local prejudice. You give them the most powerful process of the law, and you back it with all the force of the community to compel obedience. They rest in peace, and the law watches over them and their possessions, a sleepless and untiring sentinel. All this is right. But here stands one solitary provision for the unfortunate, and only one; one stipulation of the social compact, for the case of extreme and unmerited distress; one single security for the inalienable right “of liberty and the pursuit of happiness,” and that alone remains without effect, sacrificed to imaginary notions of abstract justice.

Can it be according to the theory of such a government, or is it just, that the power should forever remain dormant? Is it the right of every creditor, not only to be thus aided to enforce his demands to the extent of all the means his debtor possesses, but also to use forever the whole power of the community to oppress the unfortunate, to hang over him in terror, to palsy his efforts, and to break his heart? The debtor, as well as the creditor, is a member of society, bound to contribute to maintain its peace, and defend it from the assaults of external force, and even more likely to be obliged to do so in person, because he cannot purchase exemption. He helps by what strength he has, to uphold the institutions upon which the security of all depends. And what is this imaginary demand of justice? Not worth estimating. If all the insolvent debtors in the United States were enumerated, and their debts scheduled, I ask, gentlemen, to turn this calculation in their minds, and tell me how much the chance of obtaining payment by coercion of law is worth. Is it the thousandth part of a dollar? And to interfere with this, is called impairing the obligation of contracts, and denounced as immoral and unjust. Sir, by the bill on your table, the creditor gets more than he can lose. He gets the chance of his debtor becoming again an industrious man, and acquiring the means of paying his debts. I am not indulging in a mere dream; I have an instance at hand. There is at this moment within the sound of my voice, a member of this House, who was a certificated bankrupt under the act of 1800. Relieved by that much calumniated law, he was enabled by his industry to acquire the means of paying his debts—to his honor be it told, he has fully paid them, and now enjoys as he deserves the highest confidence of society. Let one instance of a similar occurrence be shown in the case of an insolvent law, and I will then produce another.

Creditors, as a body, therefore, are evidently gainers by such a law. They have a prompt and efficacious remedy,

to secure to them the most equitable disposition of the debtors' effects, and they have not a worse, but it may be fairly asserted they have a better prospect of obtaining the residue after a discharge than they had before. Society is a very great gainer, by the restoration of a useful citizen to the pursuits of wholesome industry. The honest debtor, who has some interest in the social compact, is also a gainer. And can it be, is it possible, I beg to repeat, where the interests and wishes of the larger portion of creditors, not only in general, but in any given case, concur with the interests of society and the interests of the debtor, that the demands of morality and justice do still require, that they should all give way to the mere will of a minority, or even of a single creditor? Two thirds unite—it is insufficient. Unless all agree, there is to be no relief. What is this, but to surrender to every creditor; whatever may be his character, rapacious, cruel or unfeeling; whatever may be his feelings, morbid, violent, and implacable; even though his passions may be excited by imaginary wrong; when he is in the worst condition possible to form a judgment (and such there may be in every case,)—what is it, I say, but to surrender to him, in his own case, the authority which society at its formation, contracted to exercise with impartiality at least, if not with something of parental tenderness and humanity?

To such extravagant lengths do these new refinements carry us! This is the morality which one gentleman prized so highly, that he said he would rather witness the destruction of a whole generation of men, than the passage of the bill on your table, and another, that he would rather see a torch put to our navy, and our merchant ships the food of worms! Neither of them meant what he said. It was only a violent figure. The destruction of a generation of men, is too awful for contemplation, too large for our conception. And as to our navy, "the bit of striped bunting," that has floated in triumph over the heads of our gallant country-

men, the stars that lighted them to victory, are as much above all price, as the miserable right to torment a ruined merchant with the process of the law, is beneath all reasonable estimate.

How, then, can it be said that it transcends the power of society, to possess such an authority as is now contended for? It surrenders no inalienable rights. It is a fit, an useful and a necessary authority, without which no civilized society would be deemed to be well constituted—without which, no well constituted civilized society has existed, and which no one heretofore ever *dreamt* could be dispensed with. The writers of the “Federalist” in a single sentence express their sense of its necessity on account of its “intimate connexion with commerce.”

But we are told by the Speaker (Mr. Barbour) it is wrong to give the relief proposed, because it puts charity to the debtor, which is a duty of imperfect obligation, above justice to the creditor, which is a duty of perfect obligation. I would not stop to notice this argument, if it had not been urged on a former discussion some years ago, and from its being repeated now, we may suppose that in his own estimation at least it has some weight. I need not say, that the rights of the debtor are as much a matter of strict justice as those of the creditor; they are founded as strongly in the institutions of society, and as much a part of the social compact. That would be a sufficient answer.—Neither is it necessary to detain the House by inquiring what it is that makes the distinction between duties of perfect, and duties of imperfect obligation. We may perplex ourselves and others, but can do no good by pursuing these distant elementary researches. The only distinction, perhaps, that can at last be relied upon, on this contested point, is, that what the law enjoins, is a duty of perfect obligation, and what it does not, is imperfect, which would also be a sufficient answer.—Let the argument stand, however, and its premises be taken for granted, what is it worth? The right



of property is of the perfect kind—giving alms to the poor is imperfect—and yet the poor laws compel us to contribute from our means, to the relief and support of the poor. The policy of such provisions has of late been very much questioned, but no one has ever doubted their justice, or the rightful power of the legislature to establish them.

But to return from this excursion into distant regions, not very profitable, and I fear extremely tedious, let us come to the constitution of the United States, where we shall at last be upon tangible and solid ground. Taking it for granted, as we must do, that the people of the United States, in framing their fundamental law of government, their social compact, were competent to give to congress the power to make a bankrupt law, to operate to the extent contemplated by the bill, have they given that power?

It is not to be denied, that before the adoption of the constitution, the states individually possessed the power; or, that many of them exercised it, and were in the actual exercise of it at the very time. It is now certain that the states surrendered the power, and as to them it was extinguished. The argument is that it was not given to the United States, and therefore that it *was extinguished altogether*, and finally.

Here let us pause—a deviation so extraordinary from the track of all civilized communities, a departure from the course followed and approved by the states who formed the confederation, the voluntary destruction of a power which the commentators on the constitution declared to be “intimately connected with commerce,” could not have happened without strong reasons, and we should expect to see it signalized by something emphatic and plain to every apprehension. Is there any thing of the kind? Not at all; we must go in quest of it among the schoolmen and the casuists, and instead of looking into the constitution we are to explore the original grounds of right and wrong.

The constitution gives us the power, in plain, strong, and

comprehensive terms, without limitation or exception, (save that they are to be uniform throughout the union,) embracing all laws "upon the subject of bankruptcy," in as full a sense as those terms were understood at the time by any state or nation. If we could in any way persuade ourselves to be at a loss for their construction, we need only look to the fact, that in the very city where the convention were sitting, there was then in operation a law "upon the subject of bankruptcy," which discharged the effects as well as the person of the bankrupt. The power, generally given, includes every variety of its exercise. It must necessarily include that which is essential to its salutary exertion; and it has been already demonstrated, by arguments which need not now be repeated, that the discharge of the debtor is not only just and right in itself, but is indispensable to the efficacy of the law in favour of the creditors. The gentleman from South Carolina, (Mr. Lowndes) has conceded this. Experience has confirmed it. All mankind would join in condemning a law that would strip the unfortunate man of all his means by a summary process, and leave him without the hope of relief; and every unfortunate man, thus circumstanced, would be strongly tempted to keep back, by fraudulent concealment, some part of his property. There must be mutuality even here.

But this will "impair the obligation of contracts," it is said, and the constitution of the United States has itself denounced that as *immoral*, by prohibiting it to the states—which is in effect to argue, that because there is an express denial of the power to the states, therefore there is an implied one to the union, though the power is expressly given to congress. It is quite certain, that in a moral point of view, a bankrupt law does not impair the obligation of contracts—no human legislation can absolve the conscience, as has already been remarked. The uniform current of decision is, that a discharge under the bankrupt law, leaves the debt in force upon the conscience and honour of the

debtor, so as to be a sufficient foundation for a new promise. It takes away the remedy, which I admit might be of great importance. The error lies in assuming, that the prohibition to the states is constitutional evidence of the immorality of the power. It is not so—it is not a *moral*, but a *political* restraint, intended to preserve the harmony of the union, by denying to the states powers which ought to be exercised uniformly, and not according to the local interests or wishes of each—which were therefore expressly given to the union, and for that very reason not necessary to be retained by the states. Upon this ground, the decision of the Supreme Court of the United States is fully vindicated. The clause in question might be interpreted in one of two ways; the moral interpretation (the narrowest) would be, that such a law was not within the prohibition; the political interpretation, would be more extensive, looking to the great objects intended to be secured. In what sense, were the Supreme Court to understand it, the most limited, which would leave an opening for all the evils intended to be provided against, or the most general, which would effectually guard against them all, and *could do no injury, because congress still possessed the power?* They expounded the clause in its fair sense, according to its intent as a *political* restraint, in a *political* instrument.

To argue that a power is denied to the union, because it is denied to the states, is to reverse all the rules of just reasoning, and would strip congress of some of the most confessedly useful and necessary powers. It would be much more like the ordinary rule of construction to say, that what is prohibited to the states, and not prohibited to congress, was not intended to be prohibited; and in the instance now under consideration, the omission was not accidental, but manifestly deliberate and by design. “No state shall pass any bill of attainder, ex post facto law, or *law impairing the obligation of contracts.*” Congress shall pass “no bill of attainder or ex post facto law.” It is impossible

for any one to believe, that these two prohibitions were intended to mean the same thing, or that an entire clause, of great significance, was dropped by neglect or inadvertence from the latter.

It could not be; for congress have the power to impair the obligation of contracts, and those who framed the constitution, knew they must have it. Be not alarmed; I do not contend for any thing so extravagant, as that congress may legislate directly upon contracts, to impair their obligation, and for no other purpose. But here are certain great powers expressly given, for the public benefit, which in their exercise, not only may, but must have that effect, and all that is contended, is, that congress are not on that account restrained from exercising the powers granted. Take the power to declare war, for example. There may be a contract of partnership between a person residing in the United States, and a person in England, to continue for a number of years—the two countries being at peace when the partnership is entered into. War is declared: what is the effect? The contract is dissolved, not only as to the partners, but as to all other persons. That was the case of *Griswold vs. Waddington*. Take a case of two citizens, resident in the United States. One contracts to load, and the other to carry a cargo from the United States to a distant country, for a certain freight or hire to be paid. The cargo is loaded; the ship is ready to proceed; great expenses are incurred—and then comes an embargo, laid by virtue of an implied power. What is the effect upon the contract? It is suspended. In the same case, war is declared against the country to which the vessel is destined. What becomes of the contract? It is dissolved. I need not refer to the power of “coining money, and regulating the value thereof, and of foreign coins,” of issuing paper money or the like. They may all operate upon contracts. The power to establish “uniform laws on the subject of bankruptcy,” is given as expressly and clearly as any of

them, and is no more to be repealed by this ideal limitation, than they are, even if it should have the effect of impairing the obligation of contracts. In fact, the constitution has transferred the power from the states to congress, and it is natural to suppose that it is transferred as full and entire as it existed before.

There are two very obvious rules of construction to be applied to this instrument, which put an end to all such doubts, and are necessary to preserve its integrity. The first is, that where a power is expressly given, it is to be understood if not in its largest at least in its natural and obvious sense—because when limitations are intended, they are expressly assigned. The other is, that where a power is given by implication, it is to be implied no further than is necessary, to carry into effect powers expressly granted. The one of these rules is just as sacred as the other, and the departure from either has the same consequence, of throwing us upon the unlimited doctrine of implication, and subjecting the instrument to every sort of interpolation that ingenuity can devise. Instead of a plain text, to be expounded fairly, according to the natural import of its terms, it will become what our own notions may from time to time happen to tell us it ought to be, till it lose all claim and title to respect.

The constitutional power being thus clearly established, it is then a part of the social compact, and there is a high constitutional duty to fulfil, of permanent and invariable obligation towards those who are concerned in its exercise. It is as much our duty as it is to establish courts of justice. Do we mean to contend then, we are asked, that every power given by the constitution, is to be kept always in exercise? No. There are some which, from their nature, are only to be occasional, as that of war. There are others which regard our social and domestic comfort. We do not mean that even this authority is to be so understood in the most literal sense. But we do mean to say, that

when those call upon us who are interested in its exercise, for whose benefit and well being it was chiefly intended, even though they be merchants or insolvent debtors, it is no fit answer to tell them that we do not want it, or that bankrupt laws, under any circumstances, are unjust, and ought not to be passed. This is an argument against the constitution itself. If they stand in need of it, and make out a proper case, it is no appeal to our sympathy, it is no claim upon our charity, they are preferring but a demand to have a social stipulation executed in their behalf, which I again say we are bound to execute, unless strong reasons of unquestionable expediency stand in the way.

It is due to the states who have surrendered the power, and are no longer able to give adequate relief—it is due to their citizens, who now look in vain to state laws, that we shall not tell them that here too they must look in vain—that the constitution has put an express restraint upon the states, from policy, and we now put an implied restraint upon ourselves, from abstract notions of what the constitution ought to be. The states cannot, and we will not give relief.

Do they ask for it? We have memorials from Salem, from Boston, from New York, Philadelphia, Richmond, Charleston, and elsewhere, not from debtors alone, or even principally, but from creditors. The chambers of commerce of New York and Philadelphia, represent the body, and express the feelings of the commercial community of those places. The memorial from Charleston, is from men of high respectability, acting on behalf of the merchants, and stating with great force, in a comprehensive argument entitled to the serious attention of every member of the house, the inefficiency of the present laws to do justice to creditors, and the indispensable necessity of a bankrupt law, for their aid. There is, too, a memorial from Nashville in Tennessee, presented at the last session, setting forth the claims of the debtors with unquestionable truth,

and with a strength that truth alone can give. There is, it is true, a remonstrance from Boston and one from New York, and perhaps from some other quarter, but they bear no comparison with the weight of opinion and feeling expressed in favour of the law, nor do they give any answer to the reasoning on which they are founded. Among those who are interested, and have most knowledge of the subject, the entire body of merchants in the United States—who I must here take leave to say are as much attached to our institutions, have as deep a stake in society, are as strongly connected with the country by every sort of tie, are as useful, as honourable and as well entitled to consideration, as any class whatever—I affirm, that in that body there is as much unanimity as ever there was on any great question.

Do they make out a case for our interposition? The constitution would seem to answer that enquiry, and to put it upon our opponents to show, that it ought not to be carried into execution. But the case is fully made out, and without restating what I formerly advanced, I would say that as to the debtors, especially, it is marked by a peculiarity of the most decisive character. It is not denied, it cannot be denied, that if ever there existed circumstances which loudly and imperiously called for a bankrupt law, for their relief, they do now exist—if the necessity be not at this time sufficiently manifest, it never can be so. The unexampled change through which we have passed, the political measures of restriction, war and peace, that have followed each other with such rapidity, the unprecedented reduction of the circulation, all these, the acts of the government it is admitted, have swept with the destructive energy of a tornado, producing an extent of individual calamity, such as never before was witnessed, and it is to be hoped will not in a long course of time be witnessed again. Skill and prudence, could no more avoid their in-

fluence, than they can successfully contend with the fury of the elements.

This, I say, has been admitted. Some gentlemen have gone so far as to acknowledge, that they would be willing to make provision for the unfortunate. But will not—and the question seems to stagger and confound their resolution—will not some who are unworthy, avail themselves of it? Yes, they will. Let it be admitted. What then? Are you to wait till you can form a system so complete, and can administer it by such perfect agents, that none but the meritorious can possibly receive the benefit? If the bounties of Providence were withheld from us, till none could enjoy their blessings, but those who deserve them, what would be our condition? But the sun shines upon the just and upon the unjust—And, if it should so happen that the vivifying power of the present bill, while it imparts life and animation to a hundred of the unfortunate, should reach one fraudulent or dishonest man, or even ten, it is not on that account to be rejected. The balance would still be in its favour, by the undoubted good it would do. The humane maxim of our criminal law, is, that it is better ten guilty men should escape, than one innocent man should suffer. But here you reverse it—you condemn ten innocent men to suffer, that one guilty man may not escape.

I forbear to press the great national considerations which are so well stated in the memorial from Charleston, and have been fully presented in the debate. It is needless to insist upon the inadequacy of state provisions, since the decision of the Supreme Court of the United States has made it so painfully familiar. Nor need I advert again to the dangers which threaten from state legislation; they have been already pointed out by others. But, I will hasten to reply to some other arguments advanced against the bill, distinctly admitting, that if our opponents can satisfactorily show that the law would have a tendency to produce or to increase frauds, to demoralise society, and in



that way to do more harm than good, they will then have made out a strong objection to its passage—an objection to be fairly weighed, and not lightly estimated, even in comparison with the high considerations of justice and humanity, which demand it at our hands.

For this purpose it is urged, and with apparent triumph, as if it were a conclusive argument against the adoption of a system of bankrupt law, that upon a recent inquiry, carried on by order of the British house of commons, frauds and abuses to a great extent, have been proved to exist in England. The fact is so—and if the concession be of any value, gentlemen have the full benefit of all the objection it affords. But before we advance from it to a conclusion, so important as to involve the fate not only of the present bill, but of all future efforts to do what the exigency of the case seems so strongly to call for, let us first be sure that the conclusion is warranted. I will not rest upon the answer—a sufficient answer, which has already been given—that these defects have not been of such a nature as to induce any man in that nation seriously to propose an abolition of the system, but only an amendment of it; that the bankrupt law is still in force, a monument of the conviction, that the evils belonging to it, great as to us they may appear, are more than overbalanced by the good. But let me ask, does any one who has carefully examined the evidence and the report, believe, that these abuses and frauds are inseparably incident to such a law? That a law which proposes to take possession of the effects of a failing debtor, and distribute them equally among his creditors, and upon certain terms to give a discharge, must necessarily and inevitably be the prolific parent of vice and crime? If he does, he comes hastily to a harsh conclusion, which I believe to be wholly unwarranted. I believe and think I can satisfy any reasonable man, that these frauds and abuses are owing to other causes; to the state of society; to defects in the provisions of the law; and to errors and mis-

conduct in its administration. It might here be fairly put to gentlemen to consider, that there are bankrupt laws in every state of Europe, that is civilized and commercial; that in these, no such abuses and frauds have occurred, or if they have, the evils that have been put down are greater than those which have sprung up; the system is still retained. Whence is it, then, that these acknowledged abuses and frauds have proceeded in England? I would answer, from the state of society, that great cause in which has originated so many and such various modifications of vice and crime, and especially of every sort of fraud. The chief sources from which they have flowed are ignorance and poverty. There is another, to be noticed presently, more pregnant of evil, perhaps, than either or both—take a single fact. The commitments of the united kingdom, in the year 1818, for crimes of every sort, were no less than 107,000. The number appears incredible, but it is literally true, all the code of sanguinary punishments to the contrary notwithstanding. The state of things there, and especially in the metropolis, has been unfolded in many ways, and is altogether shocking and deplorable. Look at the reports upon the police of the metropolis—upon mendicity—upon the state of the prisons, as exhibited by Buxton—upon every thing of internal regulation. It is one dark picture of vice and crime and misery. We know that there is a great surplus of ingenuity, excited and quickened by the severe pressure of poverty.

Is it too much to say, that in some shape or other, fraud and corruption have intruded themselves into all the institutions of that nation, even those which are confessedly praise-worthy and worthy of imitation—even into the institutions of learning and humanity. We should all agree, with one accord, that nothing can be more useful than education; nothing more honourable as well as useful, than establishments for its diffusion, and especially among the poor; nothing more unexceptionably good than endow-

ments for the support of such establishments, from the munificence of individuals or the state; and to her honour be it said, no nation ever existed, in which they were more liberal or more extensive than in Great Britain. Have they escaped the infectious touch of fraud and abuse? He must have a very slight acquaintance with what is passing about us, who will affirm that they have. This subject, of charitable foundations and provision for the education of the poor, as well as that of the bankrupt laws, has engaged the attention of parliament. Committees have been appointed, evidence taken, and finally, a commission established for prosecuting the inquiry, and applying the remedy. What has been discovered? Schools amply endowed, without a single scholar; masters liberally paid, performing no duty; the funds, in short, destined for the purposes of charity and education, diverted entirely from their objects, and fraudulently applied to the use of those for whom they never were designed. Let me take another instance—a melancholy one, indeed, where one would have hoped to find an exception. I mean the inquiry into the state of the lunatic asylums in England, which was also a parliamentary inquiry. If there be any thing which would appear to combine the strongest claims upon the justice and the sympathy of man, it would be this provision for the unfortunate in whom the divine light has been extinguished, or so obscured as to be no longer sufficient to direct their footsteps—who seem, as it were, to be thrown by Providence upon their fellow creatures, and ought to quicken in us an unmixed feeling of compassion and humanity. Yet, what has been the result of the inquiry? The funds destined for their support, diverted, fraudulently diverted from their purpose; with few exceptions, the whole system, conceived in the best and noblest spirit, turned into a speculation upon human misery; the helpless victims of this awful dispensation, subjected to the more than brutal ferocity of beings in the shape of men; suffering from filth and want,

neglected and robbed ; yes, the miserable insane robbed of the provision which humanity had made for their support. I refer to the minutes of evidence to bear me out, and especially to the case of Norris, in page 175, and to pages 11, 46, 90, &c. Indignation at the unfeeling cruelty and avarice of the guardians and keepers of these institutions, is swallowed up in horror at the scenes disclosed.

It has already been stated, that besides ignorance and poverty, there is another great source of evil, (itself both cause and effect) perhaps more productive than either or both, and embracing quite a different sort of people, those who are neither poor nor ignorant, who have not the temptation nor the excuse for vice or crime, and who cannot be said to be guilty of crime—they are not pick pockets nor highway robbers. *It is the universality of corruption.* I am not to be charged with the want of justice or even with the want of charity. I will state nothing but upon the highest evidence. I will not imitate the example of Earl Grey, who has publicly given his sanction to atrocious calumnies respecting our country, on no better authority than that of Fearon. England is unquestionably a great nation—great in arts, in arms, in letters and in science; great in industry and wealth, great almost beyond example in martial renown, great in moral and intellectual courage. Some of her best heads, and her best hearts, are now actively engaged with steady resolution in the endeavour to reform her institutions, and repair the injury which time and circumstances have done to the social edifice, and it is to be hoped they will succeed. I would not, needlessly exhibit, even what the truth will fully justify, for there is no pleasure in stating disagreeable truths. That nation has much to rejoice in, and she has much to mourn over—but when the inquiry about her bankrupt law, is thus held up to warn us, we should forget what we owe to ourselves, and what we owe to the question before us, if we did not fairly meet the argument, and show how much it is really worth.

Nothing shall be stated without the highest authority, and as I have heretofore appealed to evidence taken by order of the house of commons, let me at present appeal to the assertion of a very distinguished member of that body, now no more—a man warmly attached to his country, a scholar and a gentleman—a model, it was said, of the best of his nation—one whose reasonings were sometimes paradoxical, but always ingenious and elegant—one, who above all men was accustomed to speak the truth fairly and manfully and fearlessly, but never in the spirit of cant or faction—I mean the late William Wyndham. He plainly avowed in parliament, that corruption was a part of the system of government in England, and he boldly vindicated it as a necessary part of that system, affecting and regulating all the rest, insisting at the same time that it began with the people, and not with the government. It would be tedious to go into particulars. What is the result? *Universal indulgence*, a delicate forbearance to expose or to correct abuses, destructive of every good purpose, and ruinous to all but those who profit by the abuses themselves. They remain uncorrected until they force themselves into notice by their own enormity, or are dragged into view by intrepid men like those who have instituted each of these inquiries. Is it not evident that this tenderness for each others frailties is felt in the administration of the bankrupt law, and is it not rebuked in the report of the committee?

I might bring into the view of the house, a late election of a mayor of Liverpool, where for the first three days, the candidates at the close of the polls had each the same number of votes. The regular price of a vote on the first day (as the newspapers state) was seven shillings. As the contest became more animated, it rose to—I do not recollect how much—perhaps as many guineas. Or I might remind them of the memorable account given by Lord Cochrane in the house of commons of the expenses of his first election, when voters were publicly invited to come and receive ten pounds ten shillings.

What is the just inference from all this? Because elections in England are the scenes of shameful and notorious traffic, where votes are bought and sold; because electors are bribed, and the elected (according to Lord Cochrane's statement) must repair the losses of a costly election by selling himself—that therefore you will have no elections? You will have no establishments of charity or letters or science, because in England they have run to waste or worse! You will not even have a receptacle for the unfortunate maniac!

And yet, each of these conclusions would be just as well warranted, as that you will have no bankrupt law; for it is plain as evidence can make it, that the evils complained of, are not evils necessarily or even naturally belonging to the system, but to an imperfect and bad administration of it, operating upon a vicious state of society. "Principles, and not men," was once a favorite maxim. A sagacious and highly gifted man, whose life was one continued political struggle, in an unfinished work, which was the fruit of calm meditation, aided by his great experience and knowledge, has laboured successfully to prove that the maxim is false, and that good men are at least as important as good principles. He has clearly established that the best laws are of no avail if bad men are to administer them, and has cited one instance of a law of infinite value coming into existence in the very worst times. I allude to Mr. Fox's historical fragment. "Principles and men" is much nearer the truth.

We have all the institutions which have been now adverted to. We have elections without bribery—we have establishments of education and charity, without robbery of the poor—we have lunatic asylums where the unhappy are treated with tender and kind attention—yes, one I know of, and if it were allowable on such a subject to indulge a feeling of pride, I would say that I am proud of living among a people who have established and maintain such an

institution as the Pennsylvania hospital. I believe we can have a bankrupt law (as we have had) without any of the frauds and abuses that occur in England.

Time will not permit me to enter, at large into an examination of the defects in the bankrupt law of England, and its administration, which have given occasion to the general censure to be found in the minutes of evidence. Some of them have been already pointed out; and they are themselves sufficient to justify the witness, who says "the bankrupt law, *as now administered*, is a disgrace to the country." In London, the business is transacted in tumult, noise and confusion which forbid all deliberate examination—In the country, the solicitor who sues out the commission, is permitted to name the commissioners. Is it wonderful, that the commission should become "stock in trade?" A case occurred, where one partner of a firm was petitioning creditor; another was solicitor; a third, commissioner, and a fourth, assignee. The Lord Chancellor expressed "strong indignation," and said, "unless the court holds a strong hand over bankruptcy, *particularly as administered in the country*, it is itself accessory to as great a nuisance as any known in the land." This, and the accompanying remarks, are quoted with great emphasis against us in the present debate. Now it never appears to have occurred to the Lord Chancellor, that he had no one to blame but himself, and that all this gross abuse which so excited his indignation, arose from his own neglect or from his own excessive delicacy, to call it by no harsher name. How did it happen, that commissions became stock in trade, to the great scandal of the law? The answer is plain, because he suffered solicitors to name the commissioners and direct the execution of commissions, instead of doing it himself; he let the authority fall from his own hands, to be caught up and exercised as chance or interest might direct, and it fell into base and unworthy hands. And why did he suffer this? Mark well the reason, it speaks a language which

it is impossible to mistake or misunderstand, and, being characteristic of the administration of the law, throws a broad light upon the whole subject. The nomination of commissioners by himself, "*he considered as an exercise of favour, which was unfair towards those whom it excluded.*" (Min. p. 57.) This is the same Lord Chancellor who is quoted for his strong indignation at the abuses in country commissions, and who tells us it is necessary to hold a "strong hand" over them! The committee rebuke him in their report for his extreme delicacy. Is it wonderful, that where the first step is towards any thing but the fair execution of the commission, the whole should end in something which has no regard to "the interests of the estate or the creditors?" This cannot happen under the present bill.

I forbear to remark upon the delays that must arise from the circumstance of all questions of bankruptcy coming before a single judicial officer already overloaded by his various avocations; upon the great expense of all judicial proceedings in England; upon the excessive severity of the penal provisions in the English bankrupt law, which has entirely defeated their execution, because it is repugnant to every feeling of justice. Whoever will be at the trouble carefully to examine the evidence, will see these things for himself; he will find most of them stated in the report of the committee; and if he will then turn his eye to our own country and to the bill on the table, he will be satisfied that there is no ground for apprehension of the frauds and abuses which prevail in England.

Our opponents place much reliance also upon the operation of the act of 1800, or rather the hasty repeal of it. This is evidently their favourite ground, upon which they appeal with great confidence to the public sentiment of the country. That law, says one of them, was not suffered to live out its short day—it sunk under the weight of its own iniquity. Apart from general denunciation, which amounts



to nothing, what is affirmed against that law, or what can with truth be affirmed against it? Let us come to particulars, to the unvarnished matter of fact, and not be carried away by sweeping allegations, which may be entirely unfounded. It cannot be asserted with truth, nor have I heard it asserted at all, that there was fraud and abuse in its administration. It was every where executed by respectable men, with fidelity and intelligence. Nor has it been stated, nor do I believe it can be truly stated, that frauds to any considerable extent were committed under it or by its means. There may have been some, as there probably will be under every system of bankrupt or insolvent law, and as there are, unquestionably, wherever insolvencies occur, even though there be no bankrupt laws at all; as there are, even where rigorous imprisonment for debt prevails. *I hazard nothing in saying it was better administered than any insolvent law in the United States ever has been, or probably ever will be.*

Neither has it produced the great evil, so much apprehended, of certificated bankrupts afterward acquiring large fortunes and riding over their destitute creditors without paying their debts. That is a mere creature of the imagination, of which I will say a few words presently. And here I must express my obligations to the gentleman from South Carolina (Mr. Blair) for bringing within our reach the means of knowledge upon what would otherwise have been matter only of speculation and opinion; and I confess that the examination of the lists, especially of that from Pennsylvania, has afforded views that are highly encouraging of the practical operation of the law. That list contains about two hundred cases, (fewer than I supposed) and it gives the names of the persons who were bankrupts, of most of whom I have been able to obtain some knowledge. By far the greater part of them were worthy men, who well deserved the relief. Of the two hundred in the list, seventy three are since dead; there

may be more. Not one of them died rich. Of the living, whose real condition is still uncertain, there are but two who are reputed to be rich. One of the two, I have understood, has paid his former debts, and it is probable the other has, for I do not recollect to have ever heard any complaints made of him. The rest are, generally, as far as my knowledge of them extends, men of good character and useful citizens. Some of them have been in the public service, and others occupy respectable and useful places in society, but of an unambitious and in a certain sense inferior kind—that is, inferior to their former occupations—which enable them with industry to maintain themselves reputably, and to educate, and bring forward their children qualified for usefulness in their day. It was probably the same in other districts—and if such be the practical operation of the law, who will say it is not desirable?

Why, sir, it is a mere phantom that has haunted the gentleman from South Carolina, (Mr. Blair,) raised by dwelling too long upon a single view, and that a conjectural one, instead of looking at the truth which experience teaches, or which reflection, directed by what we all know, instead of being vaguely indulged, would equally teach. He is afraid of the demoralizing example of certificated bankrupts acquiring wealth. Is there any such danger? Let him examine the thing soberly and candidly. Let him suppose one hundred men, for instance, to engage in commercial enterprise, beginning in the spring time of life, with all the advantages of youth, health, spirits, untouched credit, and what fortune may belong to them. How many of them will arrive at great wealth? Again, sir, let him suppose one hundred bankrupts to recommence their life; advanced in years; with broken spirits; their credit tainted; no capital to begin with, and every thing against them. How many of this second set are likely to arrive at the dangerous distinction of great wealth? And if there be any, how many of these does he suppose will deprive themselves

of the high enjoyment of paying their debts?—The chance is not worth computing. Every profession or occupation has prizes, but they are few in proportion to the blanks. In the occupation of a merchant, one would almost be led to doubt—such is the scene of individual ruin our commercial history presents—whether there are any prizes at all. We may be sure the high ones are very, very few indeed : And if he has no other objection to the bill than this, he ought at once to yield it as resting upon no real foundation. It is not worthy of being received into a rational calculation.

But it is supposed that under the act of 1800, there were very few dividends. Indeed from what has been said, we should conclude there were none. Few or many, are always comparative terms, and are absolutely unmeaning words unless we have something in our minds with which the comparison is to be made. Would there have been as many or more without the bankrupt law ? Has the whole estate in every case been fairly divided ? These are the true enquiries to be made, as to the point now in question, and they are answered by the lists more satisfactorily than I believe any one anticipated. It will be born in mind, that the early operation of the law would be principally in cases of previously existing and stale insolvency, where the estate had been already consumed for want of adequate inducement to surrender, or disposed of by assignments under insolvent laws or otherwise. The law was repealed too soon to give it a chance to exhibit its real usefulness. It must also be recollected, that before any dividend could be made among creditors in general, the United States were to be paid in full ; and as those who are liable to commissions of bankruptcy, are of the class of persons who are generally debtors for duties, this right of preference would exist in many of the cases. Creditors having specific securities must also be paid ; and neither of these would appear in the dividends. Now let us see what this calum-

niated law effected. The Pennsylvania list, though it gives us two hundred cases of bankruptcy, (the whole that occurred) furnishes the history of but thirty-seven cases. The rest have not been returned to the clerk's office, we have no account of them, and it does not appear how many or what dividends were declared—Of the thirty-seven cases there were ten in which there were dividends—the lowest was six per cent, they varied from that to fifty, and in one case the creditors were paid in full with interest!—In New York, where there were in all one hundred and sixty-six commissions, we have an account of only seventy-one, that is, of the cases which occurred from the first of July, 1802, to the repeal of the law in December, 1803. Of the cases before the first of July, 1802, we are not informed. Of the seventy-one cases, there were twenty-two in which there were dividends, varying from three or four per cent to seventy per cent, and in one case the creditors were paid in full with interest! From the other districts, there is no information.

This is much better, I repeat, than any of us supposed, and better—far better, it may be safely asserted, than can be predicated of any insolvent law, or of any equal number of voluntary assignments. And when you consider the two circumstances before adverted to, which would have a necessary effect upon the dividends, in the early cases, the law of 1800 is placed in a very fair and respectable light as it regards the interests of the creditor by this single glance at its operation. That the operation *was* beneficial, I have no doubt—that it *would* have been more so, if it had been suffered to continue, is matter of very strong probability. Such is the opinion of nearly all the commercial men in the union, as you see from their memorials; and they have the best means of forming a correct judgment.

But that law was certainly unpopular, say gentlemen—the sense of the country was against it; and that is urged as an argument of great force. Why was that law odious,

and why was it so hastily repealed by such an immense majority? it may be that it was misunderstood, as it is even now. It may be that its mischievous tendencies were greatly exaggerated, as they have been in this debate. It may be, that the fancied right of the creditor, to pursue the future effects of an insolvent debtor, worthless as it is in any practical estimate, was swelled into the same theoretical magnitude, as it has been in this House; and that some were persuaded to believe that to interfere with this right, to take this shadow from the creditor, even upon the most urgent motives, transcended the just power of legislation. It may be that it was unpopular then, as it is perhaps now, because it concerns chiefly but a small portion of our fellow citizens. A thousand circumstances, having no connexion with its real merits, may have influenced its fate, and it was not suffered to continue long enough in existence to establish its real character in the public estimation.

To establish that a measure is unpopular, without proving that it deserves to be so, is altogether inconclusive. To establish even that it deserved to be unpopular twenty years ago, would by no means prove that it ought to be unpopular now. It might have been unfit then, and be very fit and proper at the present time. The change in human affairs which is continually going on, is precisely what gives occasion for continual legislation, and we are all of us obliged repeatedly to admit that we have been in error. Time conquers even the pride of opinion. Look at the history of your navy. Many a gallant battle was fought for it in this house by the venerable gentleman who sits before me, (Mr. Bassett) many a prejudice had he and others to contend against, for its support, before it had fought its own way to renown and favour. Now it is the favorite of the nation, universally popular, and it deserves to be so—every man is its friend and forward to be its champion. But for the opportunity offered by the war with the Barbary powers, but for its heroic achievements

in the war with England, the same cloud might still have rested upon the navy ; it might still have been unpopular, and we should have been without the great inheritance of fame secured by our naval heroes, which those wars have left us.

The unpopularity of the bankrupt law, was owing chiefly if not wholly, to the circumstances in which it came into being. I never said, it was a party measure. I do not know whether it was or not, for I have not examined the journal, and if I had, I should not be able to decide. I know it ought not to be, and cannot now be justly so considered. But it came into being in violent party times, was characterized as a measure of the party who then wielded the power of the government, and from whom the power soon after departed ; and it has been, and even at this moment, continues to be (as we are obliged to know and feel) associated in the feelings and opinions of many with the character of the stormy day when it first appeared. There were other circumstances attending the passage of the law in the house, calculated to make it odious, and the spirit of warm party contest which then prevailed, suffered nothing of this sort to fail of due effect, for want of being sufficiently pressed upon the public attention—Hence its unpopularity.

But now let us see what it is that a bankrupt law promises to effect. Exaggeration would be as dangerous on one side as on the other—it would be as foolish to overstate its advantages, as it is to overstate its defects. A bankrupt law does not promise to cure all the evils of society ; nor to relieve all the distress in the world ; nor to correct all the vices and follies of men. Nay, sir, its friends cannot soberly undertake that it will be altogether free from some peculiar evils of its own—for that is the case with every human institution. Let us not deceive ourselves. Good and evil are found mixed in some proportion in whatever comes from the hand of man, as virtues and vices, wisdom and

folly, strength and weakness are found mixed in his character. The true question is this—is it better or is it worse than the present state of things? Is it our duty under the constitution? Let us take a fair and liberal and rational view. It is very possible, and even very easy, by presenting only the objectionable parts of any human establishment, to give it a bad appearance. Perhaps to hasty and superficial observers, the evil is more apparent than the good. The law's delay, the expense of judicial establishments, occasional hardship and inconvenience from the rigorous demands of justice—these are often insisted upon. If we forget that judicial tribunals, are the great conservators of private rights and public tranquillity—that their mere existence is a perpetual safeguard, of which we feel the benefit when they are at rest, as when they are in exercise—that the number of cases they may have to decide, is of little importance compared with the knowledge that they are always open to give redress, and thus are exercising a constant preventive and conservative influence—if we forget that the authority of the judge is the authority of the law, that the independence of the judge is indispensable to enable him to perform his stern duty, and that the unvarying rigour of judgment, is the dispensation of justice according to law—I say, forgetting all these things, we may prove that courts of justice are almost an evil.

The good which is done, is silent, unostentatious, gently but efficaciously pervading the community, and scarcely attracting observation, while each instance of what any man or set of men choose to think a grievance, is instantly the topic of complaint, and often of loud and importunate complaint.

The same thing has happened to us, I mean, to congress. We have been freely censured, and we have censured ourselves; perhaps the censure may in part be just; but those who see in this body, nothing but a collec-

tion of men, who waste their time in fruitless discussion, do not do justice to representative government or to the body itself. They do not know that even here, there are many who are silently and laboriously occupied in doing public work, which makes no noise, and engages no attention, however faithfully done. Let us endeavour to avoid deserving such censure.

The press, too, the great intellectual light of the world—what should we say of that, if we looked only at one side of the case? But I must not enter further into such inquiries. What is it, I repeat, that the friends of this bill promise? That it will do some good. What do its enemies say? That it will not cure all evil. Granted. Will it be better or worse than the present state of things? *I firmly believe things cannot be worse than they now are.*

The laws, as they stand at present, are sufficient for creditors in general, but not for the creditors of a failing debtor. They are limited in territorial operation, they are strongly tinged with local feeling and views, are repugnant and contradictory, and occasion conflicts, where one uniform system would produce harmony throughout the nation. They are inadequate, because they have no efficient power to compel, and can offer no adequate motive to induce an honest surrender.

The laws are insufficient for failing or for fallen debtors. They are limited in territory, and they are limited in the relief they can give. They are wholly inefficacious against foreign creditors, while the foreign debtor finds a sure refuge from his creditors in the institutions of his own country, the benefit of which is extended to him here. The merchant of the United States, whether creditor or debtor, is in a worse condition than the merchant of any European nation.

Where is the remedy? Here, in a bankrupt law—and here only; the states can do nothing, they have surrendered all their power to you—Such a law will establish



peace between the citizens of different states, by extending a common rule to all who are likely to have relations with each other, in a case where a common rule is of the greatest importance. It will give relief to the unfortunate; restore them to society, and to usefulness, and teach them to look with affection and gratitude to the government of their country—It will place your merchants upon a footing of equality with foreigners, while even to foreigners it will do equal justice—It will give greater security to the revenue; and it will have a tendency to perpetuate the blessings of this union, by extending the hand of constitutional authority with parental power, but with parental tenderness too, throughout every part of the nation.

And at whose expense will all this good be done? I answer, unhesitatingly, at the expense of no one. Gentlemen have indeed told us, that creditors may be in distress as well as debtors, and the Speaker has indulged himself in sketching for us a picture of the misery that may be brought into the family of a creditor by the failure of a debtor. It may happen, that is certainly true. What then? You cannot relieve the creditor, nothing would be relief to him but the payment of his debt, and that you cannot pay—if you could, you would effectually relieve both debtor and creditor. The debtor you can relieve—but, as you cannot give relief to both, according to this argument, you will give relief to neither. Because the misfortune of one (more or less as it may happen to be) is inevitable and incurable, therefore you will not administer the aid you can give to the extreme misery of the other. Because you are not certain that you can do all possible or conceivable good, you will do none at all. Is this wise, or humane, or just? It is of the same class with another objection that has been made, and amounts to this, that if we cannot relieve all debtors, of every description, we ought not to relieve any.

Is the bill perfect, or is it even such that any one would

undertake to pronounce that no better can be devised? Assuredly we need not insist that it is. It has been fully and deliberately and carefully examined. If there be those among us who think some bankrupt law may be made, let them now join us to make it. Here is the basis. How else can we answer to our fellow citizens who are praying for such a law? Let us not turn a deaf ear to their complaints, nor repel them with a cold suggestion, that we have not yet devised a perfect system. They will be satisfied with the bill on the table, much better at any rate than with such an answer.

And the unfortunate who now stand in need of its relief, what shall we say to them? They are waiting in anxious and trembling expectation, their eyes turned towards you with an intensely earnest and imploring look. If that bill pass, imperfect as you may deem it to be, their suspense will terminate in tears of joy and gratitude. Many a glad heart will you make, now weighed down with sorrow.

We will say to them, be patient, be patient—stay till we make a perfect system, till we devise something which the wit of man never yet devised. *We*, who are here entirely at our ease, enjoying in abundance the good things of the world—*we* will counsel them to be patient. They will answer us, that they are suffering every moment, in daily want of the necessary comforts of life, without freedom to exert their industry, and without even the consolation of hope to cheer them on their way—"the flesh will quiver where the pincer tears." We will still coolly council them to be patient. But remember, that the sand in the glass is all this time rapidly running down—with some of them, it will soon be empty. Then, yes, then, without our aid, they will obtain a discharge, which we, nor no human power can prevent—an effectual discharge. The cold clod will not press more heavily on the debtor than on the creditor; the breath of heaven over the silent depository in which he lies will be as sweet, and the verdure be as quick

and fragrant. But till that moment arrives, the unfortunate man is doomed to feel the incumbent weight of the institutions of society. Let us think of the present generation; of the men that live, and let us do something for their welfare and happiness. Let us, I repeat it, begin; for the sake of humanity and justice, let us begin.

My strength is exhausted, and I must conclude. Yet I scarcely know how to leave this part of the subject, when I think what deep disappointment will follow the failure of the bill.

Sir, I am as ambitious as people in general are, and I believe not more so. I feel unaffected pleasure in possessing the confidence of those amongst whom I live, second only to the desire to deserve it. I will not deny that I am even fond of what is called popularity. But if the choice were presented, and it be not presumptuous to suppose it—I can say sincerely, there is no honour this country can confer, which I would not cheerfully forego, to be instrumental in giving the relief intended by this bill.

## **SPEECH,**

**ON RETRENCHMENT AND REFORM, DELIVERED IN THE  
HOUSE OF REPRESENTATIVES OF THE UNITED STATES,  
FEBRUARY 2ND, 1828.**

In the session of 1827-8, Mr. Chilton, of Kentucky, offered a series of resolutions on the subject of retrenchment, in the House of Representatives, which, after a long and animated discussion, in the course of which this speech was delivered, with some modification were finally adopted. The whole subject of the proposed retrenchment of the expenses of the General Government, was ultimately referred to a select committee, composed of Messrs. Hamilton, Cambreleng, Rives, Ingham, Sergeant, and Everett.

MR. SERGEANT said he should be sorry to have it known how much difficulty he had had, to overcome the repugnance he felt to make any demand upon the time and attention of the House in this debate. If known to others, to the extent he had felt it himself, he was afraid it would be deemed an absolute weakness. He had been for some time, he said, out of the House. Great changes had taken place in its composition during that period. There were many members to whom he was a stranger. It seemed to him, also, that there was a change in the kind of demand they made on each other. Nothing appeared to him likely to engage the attention of the house—judging from what he had witnessed, unless it was piquant, highly seasoned, and pointed with individual and personal allusion. For this he was neither prepared nor qualified. He would take up as little time as possible, and, as far as he could, would avoid all topics that were likely to irritate or inflame. He would not here treat of the great question which agitates the people

of this nation, and upon which, as one of the people, he had a decided opinion. If touched at all, it would be incidentally, as the natural consequence of remarks upon the subject before the House, and of the facts he should have to state, and not as a principal point.

It was one thing, he said, to offer a resolution like that under consideration, and another to vote upon it after it had been offered. The gentleman from Kentucky, he hoped, would consider him as speaking with entire respect for his motives and views. But, for himself, he must say, that he (Mr. S.) would not have offered the resolution; yet, being brought forward, he would not vote to lay it upon the table, nor to make any other disposition of it that would prevent the proposed inquiry from having a full discussion and a free course. The reasons for both these conclusions appeared to him to be perfectly satisfactory.

He would not, he said, have proposed such a resolution, because he thought it must be unavailing. It was too extensive for any practical purpose—it aimed at too much. It embraced the whole business of congress. It was our duty, he said, to take care that the public affairs were carried on in the most profitable manner for the people, and with the least public burthen. And this was not peculiarly the duty of congress at any one time, but at all times. It was the great end and object of our labours and our care, and ought to be of daily application by all of us. He thought it too much to devolve upon a single committee the whole of that which was the common concern and care of congress.

He thought it unnecessary. Every inquiry proposed by this resolution, was already provided for, in accordance with the duty of the house, by the appointment of committees, to give effect to the great guards of the constitution within their respective spheres. No money can be drawn from the treasury, but in pursuance of appropriations made by law. No officer can be appointed but under the autho-

riety of the constitution or the laws. No salary can be affixed to an office, but by the same warrant. The Committee of Ways and Means, a standing committee of the house, acts upon estimates furnished by every department of the government. When called upon to report appropriations, they compare these estimates with existing laws and existing exigencies, and report only such as are justified by law.

When they report the appropriation bill, each item of it is subject to the revision of every member of this house. The annual appropriation bill brings every thing under review. The House itself is to examine in detail, and see that all is in conformity with the law. Have we not, too, committees on the expenditure of each department? And a Committee on the Public Expenditures, to make a biennial examination, and see that the monies have been faithfully applied, according to the appropriations, and fully accounted for? He would not speak at present of the manner in which congress makes appropriations, nor how they are to be accounted for, particularly the contingent fund of this House, or of any of the departments. But he would say this—if there be any appointment not authorized by law, or any salary paid which the law does not authorise, let the specific abuses be pointed out and traced to its source, so that the offence and the offender may be known. He knew of none such.

There was still another reason why he would not have brought forward such a resolution—he spoke sincerely, and after listening to this debate, as well as making some examination for himself—there was no basis laid for the resolution, as there ought to be, by showing that there was abuse or extravagant expenditure, or such a state of things as rendered a general inquiry necessary, either for the purpose of immediate correction, or, as had been intimated, to procure materials for a more propitious moment. The structure of this government was not the work of a day.

He did not speak of the constitution, but of the fabric which had been constructed under the constitution for effecting its great purposes. It had not been built up at one time, but by successive and continued exertions of successive legislatures. It was not the work of one party, but of all the parties which had existed in the United States. Begun by one, extended and enlarged by another—at one time perhaps carried too far, and then somewhat reduced, so as to adapt it to the state of the country, but in such reduction always following the only course that can lead to any practical result—that of examining it item by item, and piece by piece. It was not now the possession of one set of men, or of any one party, but of the whole people of the United States, by whose immediate representatives it had thus been constructed. The legislature was created by the Constitution—its pay and expenses are regulated by itself. The executive, too, was established by the constitution. The subordinate officers have been created by congress, and increased according to the growing wants of this expanding nation. Their pay and emoluments also have been fixed by congress. Even the number of clerks in each department, and the pay of every clerk, is regulated and ascertained by law. It had, indeed, been remarked by the gentleman from Virginia, (Mr. Randolph,) that the contingent expenses of this House had increased in a much greater ratio than its numbers—that in twenty years the numbers had only doubled, and the expenses were nearly quadrupled. This matter is entirely under the regulation of the House. If the expense be too great, let it be checked and controlled, by limiting, if it be possible, those branches of service which occasion the expense. But he did not believe the numerical argument precisely correct, or that in this case two and two would necessarily only make four. When it was considered that this confederation now embraced twenty-four states and three territories, the extent of the country, and the space through which information was to be

diffused—he thought it would be a great error to suppose that the expenses would increase only according to the increase of the number of representatives. He rather thought, that, like the price of plate-glass or diamonds, they would increase in somewhat of a geometrical ratio. The greater part of the expense, it was obvious, was incurred for the purpose of giving information, and this was an object of too much importance to be sacrificed, for the purpose of saving expense.

The establishments of the country have been formed in the same way—the army, the navy, the foreign intercourse. On what basis do they stand? Each on the footing upon which it has been deliberately placed, by congress, after carefully considering what the public service required, and what they were respectively worth. There may have been error—nothing human is exempt from liability to error. Sometimes, however, it is imputed with unjust severity. But if there be error, let it be pointed out, examined, and corrected. There let the wisdom of congress apply the remedy at the point where the evil exists.

There was an additional reason why, *he* would not have offered such a resolution, and especially at the present moment. He would state it freely. At the same time, he thought it proper to say that he had no doubt the resolution was fairly and honestly meant, and for the direct purpose which the mover had himself stated. He (the mover) thought, and some of his constituents thought, that there were points in which reform was necessary, and that they might be embraced by a general inquiry. But his (Mr. S.) objection to himself bringing forward such a resolution was this—a general allegation of extravagance and abuse—such as the resolution seems to imply, cannot be accurately and satisfactorily met. It is impossible, whatever may be the fact, to give it a demonstrative refutation, because it presents no specific subject for discussion. It may do harm; it is calculated to spread abroad an opinion that abuse and



extravagance exist, and are allowed, here, at the seat of government, under the very eye of congress—It is calculated to weaken the attachment of the people to the government—not to the administration—he did not mean that—not to this set of men in power, or to that set of men—but to the government itself—and to give point to an inquiry he had seen in a newspaper with great regret—of what advantage or use is this government to the people? This is especially the case where the allegation includes ourselves.

There was one part of the resolution to which he had the strongest repugnance as a subject of discussion. He never had discussed it, and he did not think he ever would. He referred to the inquiry about our own pay. The amount of the pay of members of congress has never been altered but once since the adoption of the constitution, (Mr. Randolph—twice). Twice altered the *mode* of compensation, the *amount* but once. The per diem now allowed was intended to be about equal in substance (he had made no exact calculation) to the per annum allowed by the compensation law. Two dollars a day—and no more—had been added, to the pay fixed at the organization of the government. This could not be deemed an extravagant or exorbitant addition. He looked back, he said, to the period of that law (compensation law) with great regret. Not that he thought the per annum compensation injurious in principle or wrong in amount—but he regretted extremely that the public mind should have been agitated as it was, by such a question. He would rather have foregone any advantage to himself. No: the advantage was not worth estimating—he would rather have foregone the whole pay for the time, than have been instrumental in furnishing such a cause for regret.

Dismissing this subject of the pay of the members (always accompanied with unpleasant feelings,) he said he was, on general grounds, prepared to believe, from some

examination, that the suggestion of extravagance or abuse, and the consequent necessity of reform, as applied to this House, to the executive departments, or to any branch of the service, was not supported. He did not mean to say that there *was* no useless office. But there was no proof, nor no reason to believe, that there is any such office. Nor would he say that there was no useless expenditure. But he would say, that he knew of none, and, in this debate, none had been designated. As all the offices are created by the constitution, or by act of congress, as even the clerks were numbered and their salaries fixed, and both were in the power of congress, he could not suppose, until some ground for the belief had previously been laid, that there was in these particulars extravagance or abuse.

On the contrary, he said, there was the strongest general evidence of a wise and economical administration of the affairs of this country. He did not mean the present administration merely—he meant the government in general, giving to the present administration their just portion of credit. As far as they were concerned, they were entitled to the praise of fairly contributing to give effect to a wise system of economy. Much of the merit belonged to congress.

Matters of revenue and expenditure, necessarily sounded in figures. He would not contradict those who seemed to think that even figures might deceive; but he would say that he did not know how such a subject could be understood without resorting to them. It was a matter of calculation after all, and nothing but calculation, however tedious the process, would lead to sure results. He did not intend to restrict himself in his inquiry to the term of the present administration. Beginning with the peace, when the nation was liberated from the extraordinary demands of war, he would embrace the whole period of the last administration, (which one gentleman had said he thought was wasteful and prodigal,) and as much of the time of the present

administration as had already expired, in order to show that there had been, and still continued to be, a wise and economical management of the affairs of the country. What had been accomplished during that period?

From the treasury report of 1816, it appears that the public debt was then estimated (30th September, 1815) at

\$119,635,558 46

“ Subject,” the report adds, “ to considerable changes and additions,” estimated at

7,000,000 00

Making a total of

\$126,635,558 46

There were, besides, large floating claims, growing out of the war, for which congress has been obliged from time to time to make provision. The public debt, therefore, in January, 1816, was, in round numbers, one hundred and twenty-six millions and a half of dollars. What is it now? Nominally, sixty-seven millions. But of this aggregate, seven millions were the subscription to the bank of the United States, for which we have the same amount in stock, of equal, or of greater value. Deduct that sum, and the total debt is but 60 millions. So that during the period of about twelve years, beginning immediately after the war, there has been an extinguishment of debt to the amount of rather more than sixty-six millions. But this is not all. There has been created, during the same time, a debt of five millions of dollars, to purchase Florida, that is, to pay the claims of our own citizens, stipulated by the treaty with Spain to be paid as the price of that purchase. This sum being added, as it ought to be, there is an aggregate of seventy-one millions, or nearly six millions of dollars a year, during the whole of that period, besides paying the interest of the debt, the expenses of government, and making liberal provisions for the public service. This is something. But much more had been done. For what he was about to say, he referred to the report of the committee of ways and

means in the year 1816. At the head of that committee was a gentleman, who could not be remembered without a feeling of deep regret at the public loss sustained by his early death. He possessed, in an uncommon degree, the confidence of this House; and he well deserved it. With so much knowledge, and with powers which enabled him to delight and to instruct the House, there was united so much gentleness and kindness, and such real unaffected modesty, that you were already prepared to be subdued before he exerted his commanding power of argument. He spake, he said, of the public loss—As to the individual himself (the late William Lowndes, of South Carolina,) he had lived long enough to acquire the best possible reputation—a reputation earned by a well-spent life. But to return to the immediate subject. It appeared from the report, that at the period referred to, (1816,) there was a direct tax of more than five millions and an half—there were internal taxes, consisting of licenses, to distillers, tax on carriages, licenses to retailers, auction duties, tax on furniture, on manufactures, excise on distilled spirits, and increased postage, to the amount of seven millions, making an aggregate of more than twelve millions and a half of dollars. From all this weight of burthen, the people of this country had been relieved. Above twelve millions and an half of revenue had been surrendered; yet the interest of the public debt, amounting, at the beginning of the period, to more than six millions of dollars per annum, had been duly paid—the claims growing out of the war, of very large amount, had been paid—the army establishment supported—the navy maintained and augmented—a system of fortifications established and prosecuted, commensurate with the wants of the country—the claims under the treaty with Spain had been satisfied—the regular operations of the government carried on—and beside occasional appropriations by congress, a permanent provision (a heavy draught upon the treasury, but well applied) had been made for adding to

the comfort of the declining years of the veterans of the Revolution. Something not inconsiderable, too, has been done for internal improvement. And, during the same period, as he had already stated, seventy millions had been paid off of the principal of the public debt. Of this amount, he thought it proper to add, more than sixteen millions, (principally of public debt) had been paid during the present administration.

A government which has effected this, he said, would seem to be entitled to the praise of being wise and economical, at least until the contrary appeared by some proof of extravagance. And what is our position now? There is no internal tax—no direct burthen; the expenses of our government are entirely defrayed by the indirect taxation of the customs. We are in the full enjoyment of civil, religious and political liberty, to an extent without example; and last, not least, there is as much abstinence on the part of the government, in the exercise of its powers over individuals, as can possibly be observed: much greater than any known government ever did, or now does observe. We enjoy under it ample protection, and yet we never feel its pressure. We know of its existence only by the benefits it confers.

Out of the income and revenue of the country, ten millions a year are irrevocably destined as a sinking fund to extinguish the public debt. The process is rapidly going on. He would not repeat the accurate and satisfactory statement which had been made by his colleague, (Mr. Stewart). The annual appropriation is more than sufficient to pay off the debt at the periods when by the terms of the several loans it is redeemable. The whole may be paid off in the year 1835, and a large surplus accumulated in the treasury. After that period, the present revenue will exceed, by at least ten millions of dollars, the wants of the government, and may be accordingly reduced. Such is our condition, and such our prospects.

But there is other proof more precise, and in some respects more satisfactory, upon this point of a wise economy. What are the total expenditures of the government, the public debt included? Let us take the year 1826. It affords a better basis than the year just ended, because it is all matter of exact knowledge, and no part estimated. The whole expenditure is about twenty-four millions of dollars. The population of the United States at the present moment is not exactly known. But, upon the lowest estimate that can be reasonably formed of it, this expenditure is less than two dollars for each individual composing it. How then can it be supposed, as it seemed to be by the gentleman from Virginia, (Mr. Floyd) that the comparison with other countries would be disadvantageous to us? There is no comparison in the case. Take the government of England, for example. The taxation there, according to the latest statement I have seen, taking an average of five years, ending in 1823, is no less than fifty-three millions sterling, and the parochial taxes are stated at seven millions more, making a total of sixty millions. This is equal to three pounds sterling a head of the whole population, or, at the present rate of exchange, fifteen dollars a head. But he understood the member from Virginia (Mr. Floyd) to say, that we must add the expense of our state governments and local charges, and, these being added, our government would appear to be an expensive one. In the state which he (Mr. Sergeant) had the honour in part to represent, there were no taxes for the support of government. The only state taxes existing, were some which had recently been imposed, for the purpose of carrying on a great system of beneficial improvement, which could not, with any propriety, enter into the calculation. The proper expenses of the state government did not, according to his recollection—he spoke merely from recollection—exceed ten or fifteen cents for each of the people. As to local charges, of various kinds, it would be sufficient

to say, that if they were to be added on one side, they must also, for the purpose of comparison, be added on the other. They existed every where. If we pay in our cities and towns for paving, lighting, cleansing, are they exempt from similar charges in England? If we pay for water, do they not pay too? These charges are, in fact, only equivalents for comforts we obtain, and which are better and more cheaply obtained by common contribution. No one is exempt from them. He who lives in the country must either forego these things, (some of them he cannot dispense with) or procure them at his own expense. He must sink his own well to get water, and it will cost him more. He must go unlighted in, the dark, or he must carry his own light. He must make his own path. If he come to a place where he cannot put down his foot, he must himself lay down a log or a stone to step upon. He repeated, therefore, that those charges—local ones—were only equivalents for comforts, which could not be so cheaply had in any other way. They were not part of the present calculation. He then said, this was far the cheapest government—it made less exaction of any sort from the citizen. This was a fair ground for presuming that it was not wasteful or extravagant.

Now, sir, he said, let us see how this annual expenditure is distributed. That will be coming nearer to the very point in question, and will afford satisfactory information. The total expenditure, rejecting fractions, was twenty-four millions. Of this amount, nearly one half, that is, eleven millions, were applied to the payment of the principal and interest of the public debt. For the military establishment, including fortifications and military pensions, six millions two hundred thousand dollars. For the navy, four millions two hundred thousand dollars. All these are expenditures necessary for carrying into effect laws made upon deliberate consideration, and they will continue to be necessary until congress, upon the same deliberation, shall think

an investigation is a very weighty one. It requires a careful examination of the whole structure of the government, and of all its parts. But I cannot agree with the gentleman from Virginia, and the gentleman from South Carolina, that it requires the cordial co-operation of the executive, nor any co-operation at all. The gentleman from South Carolina who last addressed the House (Mr. Hamilton,) says the keys of the treasury are in the hands of the executive, and he speaks of the executive as occupying a fortress inaccessible to us without his leave. Sir, the keys of the treasury are in the hands of this house, lodged there by the constitution. The keys of every department are in the hands of this house. Not an avenue, part or place in the government, that is not open to us, when we command it to be open. We have an unlimited power to enter, examine and enquire. We are not obliged to trust what any one may tell us, nor adopt the representation of any head of a department. I acknowledge—and if the administration were to be changed to-morrow, I would make the same acknowledgment—I do acknowledge that one concession ought, in my opinion, to be made—a very humble concession, indeed, to a co-ordinate branch of the government, and to the elevated character of the men who fill those elevated places—the concession that we may rely upon the truth of what they tell us in matters of fact. As to opinion, we can form it for ourselves. Less than this cannot be supposed or conceded.

There were other reasons, he said, why he had not voted to lay the resolution upon the table, and would not do so. Such a vote might be interpreted into evidence of a disposition to prevent inquiry. Especially, he could not consent to such a vote, when the motion was accompanied with a remark, often since repeated, as the ground of it, that this was not the time for inquiry, retrenchment or reform. What does this argument amount to? What does it mean? It means, I suppose, as others have said, that this is not a



propitious moment; that we cannot expect a "cordial co-operation" on the part of the executive. It is pointed, therefore, directly at the present executive; it is a charge of a serious nature, calculated to prejudice the executive in the estimation of the people, and to bear upon the pending election of President, to the injury of one of the candidates. He could not give it his sanction, because he knew nothing to warrant it. If reform or retrenchment were proper or necessary, he believed the present executive would give us his aid as cheerfully and as effectually as any we could have.

The gentleman from South Carolina, (Mr. Hamilton,) has very frankly given another version to the suggestion that this is not the time. He would be willing now to collect materials for reform and retrenchment, but he would not be willing now to make reform and retrenchment. And why? Because he did not wish to give the merit of such a work to the present administration, but to reserve it for a future administration. This is candid, undoubtedly, but it is unsound doctrine. The gentleman from South Carolina will be obliged, upon reflection, to abandon it. Is it consistent with the duty we owe to the people, to postpone the reform of abuses, if we really believe it necessary, in order that we may strip one administration of the merit, and bestow the grace of it upon another? Is it not our first duty to do what is required for promoting the public welfare, and to do it at the time when it is required? Can we justify ourselves in delaying it for any consideration whatever, much less for such an one as that which had been stated? He thought not. It would be entirely at variance with every notion he had of the proper functions of congress. He would therefore say, that so far as the motion to lay upon the table was calculated to do injury to the present administration, he was opposed to it upon that ground. And with this declaration, he was sure the gentleman from South Carolina was too candid to find any

fault. So far as such a motion was calculated to prevent or to retard inquiry or reform, or had the appearance of being so calculated, he was opposed to it, because he would not willingly place any obstruction in the way.

He said he was not going to enter into the contest of crimination and recrimination which had been carried on here. He felt himself entirely unfit for it. Some topics, however, had been introduced, having something of a specific shape, upon which he would trouble the House with a few observations. The diplomatic intercourse of the country has been charged with extravagance and mismanagement; and with what may perhaps be termed want of taste in its style. He understood a gentleman from Virginia (Mr. Floyd) to contend, that the whole character of our foreign intercourse ought to be changed. If the allowance to our ministers was too low, he (Mr. Floyd) would agree to raise it; but they should come home when the business was done. There should be no permanent missions in other countries—no ministers remaining abroad. This, said Mr. S., would be an entire change of the system acted upon by the government ever since its foundation. It ought not to be adopted without being thoroughly considered. He would appeal, then, to the House, whether, in the present state of the world, any civilized nation was at liberty to withhold or refuse the ordinary and established duties of courtesy and hospitality? If she claim to be of the family of civilized nations, and wish to maintain the relations of peace and commerce, is it in her power to withdraw herself from associating with them upon the terms and in the manner which the common convenience has settled? An individual may shut himself up in his house—may refuse to visit—may determine that he will neither give nor receive invitations: if he do, it will not only be at the expense of much innocent gratification to himself, and at the expense, too, of many great advantages to himself, but it will be a positive injury and wrong to society; for, as far

as his example goes, it must, if adopted, cut up society by the roots. It is the same with nations. No one can shut herself up. It has been the policy of this nation, from the beginning, to perform her part in this system of mutual and friendly intercourse. Aye, sir, said he, and let it be remembered, that one of the first and highest gratifications this country ever received, was the reception of her minister at the court of France; an act which publicly owned her as one of the family of independent nations, and increased her moral power both at home and abroad. If the system is to be changed, congress must do it. As long as it continues, the duty of the executive is to give it effect; and no blame can attach to the administration for executing the provisions of the constitution and the laws.

It was true, he said, that within a few years past our diplomatic intercourse had been extended, and its expenses increased. The family of nations had been enlarged by the interesting addition of the new states of this hemisphere. It was, in every view, particularly interesting to us. They were new, near, and valuable neighbours, with whom we must have relations, and with whom there could be no doubt it was desirable that there should be the relations of peace, of friendship, and of mutual good understanding. Upon this point, the people of the United States were in advance of congress—he did not speak hastily—the public sentiment was in advance of congress, and congress was in advance of the executive. The missions were not instituted until this House, by a resolution, passed with almost unexampled unanimity—(but one member voted against it, a gentleman from Virginia, not now a member)—until this House, stimulating the executive to open the intercourse, pledged itself to support him in the measure, and offered a liberal provision for the expense. There has been no expression since of a wish to abandon or to limit that intercourse. Whatever may be the expense of those missions to the new states, all who read the newspapers, and know

any thing of the nature of our commercial intercourse with them—all who know how they are solicited, courted, and caressed by the European powers, and the struggle that is carried on for their favour—to say nothing of other and mere general considerations, will see the importance of cultivating good feelings and maintaining a good correspondence with them; and that we cannot neglect these things, without risking the loss of valuable advantages. His own clear opinion was, that we ought to omit no fair exertions to preserve them, and that the missions ought to be maintained. He thought them of the greatest consequence.

Remarks had been made upon the style of our foreign ministers, their dress particularly. Why, said the gentleman from Virginia, (Mr. Floyd,) not let them appear with the simplicity of Franklin and Livingston? The House would excuse a word in reply. He (said Mr. S.) knew nothing of the simplicity of Mr. Livingston. That gentleman was not near to the time of Franklin. He was appointed to France soon after Mr. Jefferson became President, he believed in 1801. But this he did know, from the best information, that he was a gentleman of large fortune, and liberal disposition, accustomed every where to a liberal way of life, and that the liberality of his style of living in France was such as most materially, as he had understood, to encroach upon and reduce his private fortune. In what dress he appeared at court he could not say; but he took it for granted he accommodated himself to the fashion of the court. As to Franklin, he said, consider the circumstances under which he appeared in France. The representative of a young republic, just coming into existence, and in its very cradle exhibiting Herculean strength by maintaining single-handed a contest for its independence with one of the strongest nations that existed; attracting the earnest attention of the whole civilized world, and especially engaging the attention and the good wishes of

France, because the contest was with her habitual enemy, and promised to diminish his power. When a nation so circumstanced shall have a Franklin for her envoy, I do not believe it will be very material to inquire what dress he wears. To that state we shall never return; and, I may be allowed to add, we have not Franklins to send. He carried with him the fruits of more than seventy years, devoted, with the aid of extraordinary natural genius, and especially of most uncommon sagacity, to the acquisition of knowledge, and with the great reputation he had justly acquired, by diffusing the treasures of his wisdom and observation. He was known for his examination before the House of Commons; he was known for the fierce and virulent obloquy that had been heaped upon him, (for, he, too, was visited with obloquy) by Wederburne, afterwards Lord Loughborough, before the privy council; he was known as a man of letters, as a scientific philosopher, and, what is more, as a practical philosopher too; and he was known as a statesman and a patriot. His fame had gone before him—it shed a lustre upon his country, wherever there were men who could appreciate his merit, and that lustre is still undiminished. I do not exactly know what coat he wore. It is somewhere recorded, that in French society, his straight-combed venerable locks and simple dress were admired by the ladies, who then gave the tone to society. It was something strange, out of the common way; and if it had been even uncouth, it might have attracted still more attention. How he appeared at court\* as to dress I do not remember to have seen particularly stated. He was a long time in France before he was received. His public reception was not till about the time of the treaty. This livery, however, as it has been reproachfully called, I cannot say I have worn it, but I know what it is, and have heard some-

\* It is believed, upon good authority, that he appeared in a full court dress. The character of this eminent man would lead us to believe, that he would in this respect, conform to the usages of the court.

thing of its history. Our ministers abroad are very poorly paid. They cannot bear the expense of court dresses. If borne by the treasury, as a contingent expense, it is so much money thrown away. If borne by ministers, it makes an unreasonable charge upon their allowance. The salaries of our ministers abroad were higher, by above twenty-six hundred dollars, in the time of Franklin, than they are now, though the expenses of living were probably not more than half of what they are now. The present rate of allowance was fixed as long ago as the year 1784, by an act of the old congress. How then does the matter stand? The House will recollect, from a statement made by the gentleman from Massachusetts, that our distinguished fellow citizen, the late president of the United States, (Mr. Monroe,) was engaged in four missions in the space of little more than a year. Claims growing out of that employment have lately been allowed by congress.—He was led in rapid succession to different courts, probably obliged at each to conform to the mode established by etiquette. The expense would be for a single occasion. There are instances of charges, allowed by the government for dresses of ministers for particular occasions. When Mr. Madison was president, and Mr. Monroe secretary of state, the present plan was adopted as a relief. It is not obligatory upon the minister. He may dispense with it, if he think fit. It is no expense to the treasury, for the minister must pay for it himself. But he has the sanction of his country to wear it.—As long as it lasts, he need make no change.—Wherever he goes, he is in the dress of his own country, and stands upon his own ground, instead of being obliged to conform to foreign fashions. It has been spoken of as costing \$750. That is too high. It costs something more than half that sum. But the minister pays it, not the treasury. Why call it reproachfully, a *livery*? It is no more a livery than the coat of an officer of the army or the navy—it is probably not finer than the coat of a general officer. If it be a *livery*,

is there any disgrace in wearing it? We are all servants of the people, they are our masters; the livery worn by their servants, is one which no man need be ashamed to wear. It is the livery of the people of the United States. This is understood to be the history of the coat. If any one within the sound of my voice, should hereafter be appointed a minister—my advice may be of little value—but I recommend him to put on the livery of his country.

It is not questioned that it is the duty of the executive to conform to existing laws and policy. It is admitted that if the appointment be directed by law, there is no choice; but he understood his colleague (Mr. Ingham,) to assert the application of a rule of judgment, which he was sure, upon deliberate consideration, he (Mr. I.) would see to be unjust, infinitely mischievous and dangerous. He was understood to say, that even where the act was lawful, he would inquire into the intention, the *quo animo*. He would appeal to his colleague, if this mode of judging was not the root of incalculable mischief and injustice. A man performs his duty, walks cautiously, is, if you please a religious man—some one chooses to inquire into the *quo animo*, and pronounces him a hypocrite.

[Mr. Ingham explained. He did not say that he would apply that rule. He had said it would be applied elsewhere.]

Mr. Sergeant said he accepted the explanation of his colleague, whom he should be sorry to misunderstand. No doubt he meant that it was not a rule which, as a member of the House, he would apply here. But he submitted to him that it was unsafe and uncharitable every where. He had the sanction of the House for saying it was unjust. The first rule we are obliged to adopt is, that no member shall be at liberty to impeach another member's intention. Upon what grounds the people of this country would decide the question now pending before them, he would not now inquire—he would not say a single word. As one of the

people, he had his rights, which at proper times and on proper occasions he would freely exercise.

Some particular instances have been more or less alluded to in the debate. Among the rest, was the mission to England. It was said the minister had returned *re infecta*, and of course it must have been meant that there was all the expense of the mission without any corresponding benefit. What was the fact? The hand of sickness had fallen upon the minister, as it may upon any of us—it may now be upon some of us—and incapacitated him to perform the duty. Can this be matter of charge against any body?

[Mr. Randolph explained. He expressed his deep regret for that gentleman, (Mr. King,) and declared that the words did not import any reflection upon him, nor attach any blame to him.]

Mr. Sergeant proceeded. They were not so understood. He was sure that the gentleman from Virginia did not mean to say one unkind or reproachful word of Mr. King. The allusion to the unproductiveness of the mission had come from another quarter, and he (Mr. S.) had adopted the phrase used by the gentleman from Virginia, (Mr. Randolph.) It was his (Mr. S.'s) object to show that no one was to blame for the issue, neither he who undertook the mission, nor those who appointed him. Of that eminent man, all know something, but few of us, probably, know the full extent and measure of his services to his country. He confessed that he had himself been ignorant till within a few days past, when he was led into an inquiry which discovered to him a length and magnitude of public service beyond what he had before known or supposed. With regard to his age, it was sufficient to say, that he had just left the Senate, when he was appointed to England, and that body afterwards approved the nomination. He was not so old as Franklin was when he left this country for France, and Franklin served his country faithfully and ably as their minister for eight years and a half. [Mr. Randolph



was here understood to say—"there could not have been a better choice."]

Of that mission, he said, which had also been alluded to, in which he had the honour to have a part, the mission to Panama, he should always have difficulty in speaking, for very obvious reasons. At this time, it was impossible he should enter into the subject, because the mission was still pending, in the hands of our minister at Mexico. He would say, however, in reply to the allegations which had been made against it, that the mission had the clear sanction of all the branches of the government. What has since occurred, could neither make it right or wrong. It stood upon the same footing as at first. If it was right then, it cannot be wrong now; but he would say, and he said it with the utmost sincerity, it was but the humble opinion of an individual; he would say, from all that he had seen and all that he had heard, that if the congress should assemble at Tacubaya or elsewhere, it was of the greatest importance to the interest of the United States that we should be represented in it. He was not about to debate the matter. He merely gave this as his own single, humble, perhaps valueless opinion.

He would take up, he said, but little more of the time of the House, to notice one or two other topics which had been introduced into the discussion. A great deal had been said about the patronage of the government, and its employment to strengthen the administration in the possession of power. This had been particularly and forcibly insisted upon by the gentleman from South Carolina. Upon this point, he said, he (Mr. S.) might probably differ from many, and perhaps be thought singular. But so far from thinking patronage a source of power, he regarded it as a destroying canker, let it be employed as it might. He was strongly inclined to believe, that the executive would be stronger without it. He would not appeal, in support of this opinion, to a statesman of former times, he did not like the authority

—that statesman had employed a more direct mode—but he would appeal to the nature of man. Let gentlemen reflect, and then, he said, let them tell me which are the strongest passions and feelings of our nature, those which seek our own gratification, or those which terminate in doing good or in doing justice to others? Gratitude, for example, or self-love, revenge, dislike. The one is moderate, and dull—the other active, violent, and enduring. He who has the power to appoint, must also disappoint. For one that he can appoint he must disappoint ten; and all who are disappointed are very apt to be offended, and think themselves injured. The one who is selected may feel a cool and temperate regard for the executive. Even this is not always the case; in many instances, pride suggests to us that we owe nothing but to our own proper merits. The disappointed applicants, on the contrary, each of whom supposes himself to be at least as deserving as the successful candidate, deeply feels the wrong they think has been done them, and they yield themselves to the resentment it naturally excites. No, said he, give me no patronage, where there are so many to solicit, who think they have equal claims. But this is not all. The present debate proves it. There is no part of the conduct of a public man so liable to misconstruction; nay, so inevitably exposed to misconstruction, especially in times of party excitement, as the exercise of this power, called patronage. He *must* exercise it, because the constitution and laws require him to do so; he has no choice but to make the needful appointments; and yet, the moment he has made them, by the application of the rule of *quo animo*, they are imputed to unworthy motives. If he appoint a friend, it is to secure him. If he appoints an enemy, it is to buy him. Every way it is corrupt.

He cannot possibly escape censure, unless, perchance he could find some comfortable neutral, sitting quietly by his fireside, ignorant of the political storm that is raging around

him, who has never heard, or, if he has heard, has forgotten, that there are two candidates for the presidency, and who is so entirely destitute of all public feeling, and knowledge, as to be on that account unfit for office. If he appoint friend or foe, it is sure to be wrong. How such patronage could be deemed a source of power, especially of undue power, endangering the fair working of the constitution, he could not understand. The power of appointment must be deposited somewhere. If any one can show that, as now deposited, it is likely to do injury, and that it can with greater safety be placed elsewhere, he, for one, would willingly concur in the change. The condition of public men in this country—there is no danger, in saying this, of extinguishing ambition in the heart of man—was far, very far from enviable. He who enters into this career, with the purpose of devoting himself to the public service, takes a vow of perpetual poverty—a vow, too, which he will be obliged to keep. Circumstances will extort from him its observance, without any extraordinary effort of virtue to keep it on his part. Unless he has a private fortune to support him, this must be his doom. There are lamentable instances in our history to prove it. With poverty he must be prepared to bear reproach. If he attain to an elevated station, he is immediately an object of envy, for that which, after all, is not enviable. In times of strong excitement, of party excitement particularly, he must be judged by men who, though they believe themselves just, and may be really disposed to be just, yet, cannot be just, because they are under the dominion of passion. He must be judged by party opponents, in the heat of angry contest. It becomes us, then, in the discharge of the functions belonging to us by the constitution, not to indulge too readily in suspicion and misconstruction of the conduct of a co-ordinate branch of the government. Parties exist in this House, and in the country. Of all the bad effects of high party feeling, there is none more obvious, and none more injurious, than the

disposition to do injustice to each other's motives and intentions. See how it operates here. We have every inducement to cultivate a good understanding, and to think well of each other. And yet, let what will be before the House, unless it be some matter purely local, whatever a member says, and whatever he does, is immediately referred to party views and motives. If, standing here upon a footing of equality, in habits of daily intercourse, and with every disposition to maintain relations of mutual kindness and respect, we yet cannot escape unjust judgment from each other, what chance have those who are separated from us by distance and by employment, and whose places are the objects of contention? This government, as has already been said, in all its branches, was instituted by the people, and for the people, to promote their own welfare. Looking to that purpose, the people true to themselves, will test the conduct of the administration by its measures. Are those measures such as are calculated to promote the great object of government, and such as the people approve? If they are, the people, applying the test by which they try the conduct of all public servants, will give them their approbation. And why should it not be so? If the constitution and the laws have been faithfully executed, if the public welfare has been promoted—passion may suggest other inquiries, but here upon a very sober estimate they must end, and here I believe they will end.

The gentleman from Virginia, (Mr. Randolph,) assuming what yet remains to be decided, that the people had already condemned the administration, went on to say, that as there was a majority against them in both Houses of congress, they ought to retire—that there was no instance till that of the younger Pitt, of a minister remaining in power when he was in a minority, and he had obtained a paricidal triumph over the constitution of his country. Sir, said Mr. Sergeant, is there any such analogy between the constitution of Great Britain, and the constitution of the

United States, so that we ought to adopt in this respect, the doctrine of England? There is a hereditary crown. The ministry is appointed by the King, and that ministry carries on the business of the nation by means of a majority in parliament, as its instrument. This is the practical working of the British constitution. The ministry is generally secure of a majority, though for a moment Mr. Pitt was without it. In the practice under that constitution, every measure originates with the ministry, and the minister is to answer for it, and he is to answer too, for its failure. If he cannot pass his measures through parliament, what happens then? The crown is placed aloft, to glitter in the eyes of the nation, and is not to be disturbed. It is irresponsible. The king can do no wrong. The minister is accountable for every thing. If he cannot wield the power of parliament, he must go out, and give place to one who can; and thus the harmony of the constitution is—not restored—but preserved. How and by what means it happens that the minister generally has a majority in parliament, we all very well know. *That* is their government, and as it concerns only themselves, if they are satisfied, we have no right to object. But, is that the constitution of the United States? He would not be guilty of the absurdity of asking whether we had a hereditary crown, or ministers appointed by the crown. He meant to ask and to ask seriously, whether it was indispensable to the working of our constitution, that the two houses of congress and the executive, both deriving their authority from the same source, the people of the United States, should be of such entire accord that whatever the executive may send us shall pass, and whatever he does not send us, shall not pass. He had never so understood it.

Constituted as our government is, he said, he could not see with what propriety it could be said that there was a majority of this house opposed to the president. He did not understand it, speaking the language of the constitution

of the United States. He understood it perfectly as applied to the government of Great Britain. How can there be a majority of this house against the president? When, as now is the case, an election of chief magistrate is approaching, there may be a majority of the members who are, individually, opposed to the re-election of the president. But would a majority of this house, on that account, oppose his administration, if right in itself? Would they for that reason, oppose a measure which he should recommend, simply because he recommended it, though it were manifestly wise and fit in itself?—That would be factious. It would be inconsistent with the sound doctrine of the constitution. We do not come here to carry through the measures of the executive, as the majority of the house of commons carry through the measures of the ministry. Neither do we come here to carry on a regular opposition. We have full power ourselves to originate plans for the public good, and we ought to adopt the recommendations and views of the executive when they appear to us conducive to the same end.

It would, indeed be an extraordinary anomaly if a majority of congress could turn out, or drive out a president during the period for which he is elected. So far was this from being the case, that the government would work just as well, if we could not tell who in this house was for, and who was against the administration. Mr. Pitt, it has been said, by the gentleman from Virginia, overthrew, or triumphed over the constitution, by maintaining his post against a majority of the house; that is, the constitution as it was understood in practice before that time; for in theory, such was not the constitution, even of England. But what followed? Mr. Pitt dissolved the parliament, and threw himself upon the nation for support. The people approved his measures, gave him a majority in parliament; and thenceforth, I suppose, according to theory and practice both, he was rightfully a minister. As far as our institutions will permit,

something of the same sort may happen here. Not that the people of this country will choose a congress for or against a president : *that* is not the issue. There is an appeal now pending before the people ; it is still pending, however the gentleman from Virginia may think it already decided ; it is yet to be decided by the free voice of the people of the United States, at the next election of President. If it should be decided differently from what he thinks ; and if, at the same time it should happen that members should be sent here who, like the present are opposed to the administration, still he saw nothing to prevent co-operation in promoting the public welfare. However that might be, he surely would not then contend that the president ought to retire, and vacate the place to which he was constitutionally elected, because there was a majority of congress against him. We all derive our authority from the same source : we hold by the same tenure : we are co-ordinate branches of the same government, and not any one an instrument in the hands of the other ; or subjected to the will or power of the other. We have not the British constitution.

He said he was no prophet, and would venture no predictions as to the result of that great appeal. If the people of this country should think, with the gentleman from Virginia, that military capacity whether in exercise or not, was desirable or indispensable, in the head of this government, it might have an influence upon their decision.

[Mr. Randolph, explained.]

Mr. Sergeant proceeded. I do not wish to misunderstand or mis-state the gentleman from Virginia, and I accept his explanation—that he only stated that sagacity and courage, and the capacity for managing men, which are necessary military talents, are equally necessary in civil affairs. Thus understood, it means nothing more than that the genius which constitutes a great military man, is a very high quality, and *may* be equally useful in the cabinet and in the field ; that he has a sort of universality equally ap-

plicable to all affairs. We had seen undoubtedly, one instance of a rare and wonderful combination of civil and military qualifications, both of the highest order. Washington was equally illustrious in either department. But Washington was the production of an age. He belongs to an age, and will give it character by his matchless worth. When ages shall have rolled away, he will stand still more exalted above all those who have so much occupied our attention with their bustling and restless ambition. He will be remembered when they are forgotten, and his memory will continue to be without blot or stain. That the greatest civil qualifications *may* be found united with the highest military ones, is what no one will deny who thinks of Washington; but that such a combination is rare and extraordinary, the fame of Washington sufficiently attests. If it were common, why was he so illustrious?

But let it be remembered, also, that Washington had experience in civil as well as military affairs; and his country had experience of him in both. He was a member of the Virginia legislature before the revolution. He was a delegate from Virginia to the first congress. He left his seat in congress to take command of his country's army in the field. He was a member, and he was the chosen president of the convention which formed the constitution of the United States. In civil employments, and for high civil qualifications, he was well *known* to his country, before he was intrusted with the high office of President of the United States, and there was a thorough assurance that he had the requisite knowledge, temper, and habits. It is not questioned, therefore, that, in Washington, civil and military qualifications were combined, both in the highest degree. But the gentleman from Virginia will not deny—no one who has read the history, or considered the nature of man can deny—that the talent for war may exist without the qualifications or acquirements for civil rule—that there may be evidence of the one, and no evidence of the other—nay,



it appears to me to be impossible to deny, that qualities which are perfectly compatible with the character of a valiant and successful soldier, may be utterly inconsistent with the peaceful administration of a republic. I will not, he said, detain the House, by entering into a historical discussion of Cesar, and Cromwell, and Napoleon—familiar subjects, and well understood—nor will I inquire how far their bad example is palliated by the apology which has been attempted for them, that they were the offspring of the times, and made no change for the worse. Say what you will, it cannot alter the fact. But, selecting one of them for a moment's consideration, I would ask, what did Cromwell do for England, with all his military genius? He overthrew the monarchy, and established dictatorial power in his own person. And what happened next? Another soldier overthrew the dictatorship, and restored the monarchy. The sword effected both. Cromwell made one revolution, and Monk another, and what did the people of England gain by it? Nothing, absolutely nothing. The rights and liberties of Englishmen, as they now exist, were settled and established at the revolution in 1688. Now mark the difference. By whom was that revolution begun and conducted? Was it by soldiers—by military genius, by the sword? No. It was the work of statesmen, of eminent lawyers, never distinguished for military exploit. The faculty *may* have existed; the *dormant* faculty. That is what no one can affirm, and no one can deny. But it would have been thought a very absurd and extravagant thing to propose, that one of those eminent statesmen and lawyers, in reliance upon this possible dormant faculty, should be sent afterwards, instead of the Duke of Marlborough, to command the English forces on the continent. These, then, are the fruits of civil wisdom, which England had not gained under Cromwell, nor by the aid of Monk—and there they flourish still, as they grew out of the revolution in 1688, planted by the hands of statesmen. In this

humble plea for civil qualification, let me advert to another and greater, and, to us, much more interesting transaction. Who achieved the freedom and independence of this our country? Washington effected much in the field. But where were the Franklins, the Adams, the Hancocks, the Jeffersons and the Lees, the band of sages and of patriots whose memory we revere? They were assembled in council. The heart of the Revolution was in the hall of congress. *There* was the power, which, beginning with appeals to the King and to the British nation, at length made an irresistible appeal to the world, and consummated the Revolution by the Declaration of Independence, which Washington, clothed with their authority and bearing their commission, supported by arms. And what has this band of patriots, of sages and statesmen, given to us? not what Cesar gave to Rome, not what Cromwell gave to England, or Napoleon to France—they established for us the great principles of civil, political and religious liberty, upon the strong foundations on which they have hitherto stood, and secured for us the signal blessings we now enjoy. There may have been military capacity in congress. But can any one deny that it is to the wisdom of sages, Washington being one, we are indebted for many of the best of our enjoyments? Look at the condition of the new states of this hemisphere. One great cause of disorder, it appears to me, which prevents them from settling down in peace, is that they have no such band of sages to direct their course. Whenever you hear of disturbance, it is general against general, soldier against soldier—it is the military spirit generated by their wars, and not yet sufficiently controlled by the councils of peaceful wisdom.

I will not, he said, be tempted to reflect upon the distinguished soldier who has been honoured, aye, highly honoured by his country. Far be it from me, in this plea for civil virtues, to detract from his military renown. He has done good service. So has his great competitor. I do not pre-

tend to say what will be the result of the election. But this I do know—time will judge us all, and award to every one according to his real merits, undisturbed by the mists of prejudice and of passion.—The warrior crown will adorn the brow of the soldier, the wreath of civic merit cannot be denied to the patriot who has faithfully served his country for forty years, without reproach. I would not needlessly pluck a leaf from either.

He would not, he said, have made these remarks, but for what appeared to him the bearing of the argument he had heard yesterday from the gentleman from Virginia. He had occupied more time than he intended, and probably dwelt upon some points with tedious minuteness. Here, he would leave the matter, thanking the House for its attention. He acknowledged a decided opinion and disposition to one side of the great question so often alluded to; but however strong his wishes were for its success, he did not desire needlessly to inflict a wound upon any one.













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